

## **Chapter 9**

### **COMPREHENSIVE ZONING**

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## **SECTION 1000. PURPOSE, AUTHORITY, AND DEFINITIONS.**

### **1100. PURPOSE AND AUTHORITY.**

These regulations are enacted to promote the general welfare of the City of New Bedford, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the city, to preserve the cultural, historical heritage of the community, to increase the amenities of the city, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, Section 2A of 1975 Mass. Acts 808, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts. (Ord. of 12-23-03, § 1)

### **1200. DEFINITIONS.**

In this ordinance, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the ordinance. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this ordinance.

**Accessory Dwelling Unit:** A dwelling unit, subordinate to the dwelling unit in a Single Family structure, whether located within the principal structure or in a detached structure on the property.

**Accessory building:** A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

**Accessory use:** A use customarily incidental to that of the main or principal building or use of the land, and located on the same lot.

**Adult day care facility:** A social day care or adult day health facility, as those terms are defined by the Commonwealth's Department of Elder Affairs.

**Adult entertainment establishment:** An establishment having a substantial or significant portion of its business activity, stock in trade, or other materials for sale, rental or display, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexual conduct as defined in M.G.L. c. 272, § 31, including but not limited to the following: any adult bookstore, adult live entertainment establishment, adult motion picture theatre, adult mini motion picture theatre, adult paraphernalia store or adult video store as defined below:

**Adult bookstore:** An establishment having as a substantial or significant portion of its stock in trade printed matter, books, magazines, picture periodicals, motion picture films, video cassettes, computer compact disks, computer disks or diskettes, or coin-operated motion picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "sexual conduct" as that term is defined in G.L. c 272, s. 31, "sexual devices" or an establishment having for sale sexual devices which shall mean any artificial human penis, vagina or anus or other device primarily designed promoted or marketed to physically stimulate or manipulate the human genitals, pubic area or anal area, including dildos, penisators, vibrators, penis rings, erection enlargement or prolonging creams or other preparations or an establishment with a segment or section devoted to the sale or display of such materials.

**Adult live entertainment establishments:** Establishments which feature live entertainment which consists of entertainers engaging in "sexual conduct" or "nudity" as defined in G.L. c. 272, s. 31.

**Adult motion picture theater:** An enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating "sexual conduct" as defined in G.L. c. 272, s.31, for observation by patrons therein.

**Adult mini motion picture theater:** An enclosed building with a capacity for less than fifty (50) persons used for presenting material distinguished or characterized by emphasis on matter depicting, describing or relating to "sexual conduct" as defined in G.L. c. 272, s.31, for observation by patrons therein.

**Adult paraphernalia store:** an establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in chapter 272, section 31 of the Massachusetts General Laws.

**Adult video store:** An establishment having a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "sexual conduct" as defined in G.L. c. 272, s.31.

As to Adult Entertainment, "Substantial or significant portion" shall mean at least that portion of:

- (i) retail sales accounting for at least twenty (20) percent of gross sales; or
- (ii) merchandise accounting for at least twenty (20) percent of total merchandise available for sales; or
- (iii) shelf space and display space which when combined is in excess of eighty (80) square feet; or
- (iv) twenty (20) percent or more of the hours during which the establishment is open.

**Advertising blimp:** An advertising blimp is an inflatable sign that by way of gas or other manner is caused to float above the structure it is attached to. Further, such inflatable sign is capable of moving from place to place and is not permanently affixed to the ground or structure.

**Agricultural use, nonexempt:** Agricultural use of property not exempted by G.L. c. 40A, s. 3.

**Alterations:** As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement whether by extending on a side or by increasing in height, or the moving from one (1) location or position to another.

**Alternative tower structure:** Man-made trees, clock facilities, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or wireless telecommunications facilities.

**Animal clinic or hospital:** A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the clinic or hospital use.

**Antenna:** Any exterior transmitting or receiving device mounted on a wireless telecommunications facility, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals. This definition includes repeaters as defined herein.

**Aquarium:** A building where collections of fish, live water plants, and marine animals are exhibited for public display.

**Aquaculture:** The cultivation of fish or shellfish for food.

**Aquifer:** Geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water.

**Assisted living community:** A structure or structures used for the multifamily residence of persons that: (i) Provides room and board; and (ii) Provides, directly by employees of the entity or through arrangements with another organization which the entity may or may not control or own, assistance with activities of daily living (defined as physical support, aid or assistance with bathing, dressing/grooming, ambulation, eating, toileting, or other similar tasks) for three or more adult residents not related by consanguinity or affinity to their care provider; and (iii) Collects payments or third party reimbursement from or on behalf of residents to pay for the provision of assistance with the activities of daily living or arranges from the same, or as otherwise defined in G.L. c. 19D, s.1, as amended from time to time.

**Attic:** The space between the ceiling beams of the top story and the roof rafters.

**Awning:** A detachable or permanent shade of cloth, canvas or a light-weight metal, such as aluminum, which is so constructed that it may be readily rolled up or retracted while still attached to a building.

**Bank:** A financial institution regulated by the Commissioner of Banking for the Commonwealth of Massachusetts

**Batch asphalt plant:** A facility for the manufacture of asphalt products.

**Bed and breakfast:** A private owner-occupied residence in which lodging and breakfast are offered to transients for a fee. Such a facility shall not contain more than 3 rooms for rent. Only breakfast shall be served and only guests residing in the structure may be served.

**Billboard:** An accessory or nonaccessory, changeable copy sign erected for the purpose of advertising a product, event, person or subject not entirely related to the premises on which the sign is located, and upon which the advertising message is painted or posted with printed art panels.

**On-ground billboard:** A billboard which is supported by one or more columns, poles, uprights or braces, in or upon the ground which is not a direct part of a building.

**On-structure billboard:** A billboard which is attached to and is therefore a direct part of a building.

**Boarding house:** A dwelling or part thereof in which lodging is provided by the owner or operator to three or more boarders.

**Body Art Establishment:** Any building or structure where the practices of body piercing and/or tattooing, whether or not for profit, are performed.

**Body Piercing:** The puncturing or penetration of the skin of a person using pre-sterilized single use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening. Puncturing the outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system shall not be included in this definition.

**Building:** A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature. Unless otherwise permitted by law, portable structures shall not be used for dwelling purposes, for the transaction of business or the provision of services.

**Building area:** The exterior horizontal projected area of a building including enclosed porches, but excluding cornices, steps, terraces, fire escapes, ramps, open porches and decks.

**Building height:** The vertical distance from the mean grade of the street curb directly in front of it to the highest point of the roof, except that where a lot abuts upon two (2) or more streets the height shall be measured from the curb of the street of greatest width, and where the widths are the same, from the highest mean grade upon which it abuts, and if the building does not abut directly on a street, from the mean grade of the ground adjoining the building.

**Building, principal:** A building in which is conducted the main or principal use of the lot on which said building is situated.

**Business or professional office:** A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

**Cemetery:** A plot of land within which the remains of a deceased person or other living being are buried or interred pursuant to the provisions of Massachusetts General Laws Chapter 114, as amended.

**Change of use:** Any use that substantially differs from the previous use of a building or land.

Child Care Facility: A child care facility defined in G.L. c. 28A, s. 9.

Club or lodge, nonprofit: Buildings, structures and premises used by a nonprofit social or civic organization, or by a nonprofit organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

Commercial recreation, indoors: A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Places of assembly shall include theaters, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, or other commercial recreational centers conducted for or not for profit.

Commercial recreation, outdoors: Drive-in theater, golf course/driving range, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this ordinance.

Commercial vehicle, light: Any vehicle under 10,000 lbs. gross vehicle weight which is used in construction or other commercial enterprise. This does not include other equipment used for landscaping and/or construction or cube vans, stepvans and buses.

Commercial vehicle, heavy: Any vehicle over 10,000 lbs. gross vehicle weight which is used in construction or other commercial enterprise. This includes other equipment used for landscaping and/or construction or cube vans, stepvans and buses.

Corner lot: A lot bounded by more than one (1) street.

Concrete plant: A facility for the manufacture of concrete products.

Condominium: A building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

Construction Site Trailer: A temporary and mobile structure used as a site construction office throughout the duration of a construction project.

Contractor's yard: Land used for the storage of commercial construction equipment, materials, and supplies and for the parking of registered commercial vehicles.

Convention center: A facility for the convocation and gathering of large groups of individuals.

Conversion of dwelling: Conversion of an existing dwelling, which, because of its size has become unsuitable or unsellable for its original purpose due to changes in present day living conditions, so as to be occupied by more families than allowed in the zoning district in which it is situated.

Court: An unoccupied space other than a yard, open to the sky, and wholly or partly enclosed by the walls of a building situated on the same lot.

An "outer court" is a court which extends for its full required width to a street or yard.

An "inner court" is a court not thus extending.

"Width" as applied to an outer court is the horizontal dimension of the open side of the court.

"Depth" as applied to an outer court is the dimension measured at right angles to the width of the same.

"Width" as applied to an inner court is the lesser dimension, and "length" is the greater dimension.

Debris: Accumulated fragments, ruins or rubbish. In addition to this usual meaning shall also include but not be limited to the following: used motor vehicle and heavy equipment parts and demolition materials from buildings and other structures.

Distribution facility: A facility for the packaging, storage and distribution of previously manufactured products.

Driveway: A graded area, covered with an impervious surface or crushed stone used to access the principal use on a property from a public or public way.

Dwelling unit: One or more rooms providing complete living facilities for one family including equipment for cooking or provisions for the same and including room or rooms for living, sleeping and eating.

Dwelling: A building designed and occupied as the living quarters of one family. Single- and two-family dwellings shall be designed for and occupied by not more than one (1) or two (2) families, respectively. A multifamily dwelling shall be one designed for and occupied by three (3) or more families.

Earth removal: Extraction of sand, gravel, top soil, or other earth for sale or for use at a site removed from the place of extraction exclusive of the grading of a lot preparatory to the construction of a building for which a building permit has been issued, or the grading of streets in accordance with an approved definitive plan.

Education use, exempt: Educational facilities exempted from regulation by G.L. c. 40A, s. 3.

Educational use, nonexempt: Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

Erect: To build, construct, reconstruct, move upon, or conduct any physical development of the premises required for a building; to excavate, fill, drain, and the like preparation for building shall also be considered to erect.

Essential services: Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhand, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

Family: One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

Family day care: Any private residence which on a regular basis receives for temporary custody and care during part or all of the day, children under seven (7) years of age or children under sixteen (16) years of age if such children have special needs. Provided, however, in either case, that the total number of children shall not exceed more than ten (10), excluding participating children living in the residence.

- Farm stand, exempt: Facility for the sale of produce, wine and dairy products on property exempted by G.L. c. 40A, s. 3.
- Farm stand, nonexempt: Facility for the sale of produce, wine and dairy products on property not exempted by G.L. c. 40A, s. 3.
- FIRM: Flood Insurance Rate Map(s).
- Fish Processing: A process by which harvested seafood, or by -product of harvested seafood, is cleaned, cut and otherwise prepared or cooked for sale in bulk.
- Floodplain: Those areas of land adjacent to rivers, streams and other water courses in the City which experience regular of periodic flooding.
- Funeral home: Facility for the conducting of funerals and related activities such as embalming.
- Garden apartment: One or more two or three-story, multifamily structures, generally built as at a gross density of ten to fifteen dwelling units per acre, with each structure containing eight to twenty dwelling units and including related off-street parking, open space, and recreation.
- Green Space: That certain portion of a parcel of land which may not be improved with a structure or pavement.
- Gross floor area: The sum of all floor areas of a building or group of buildings on a lot as measured from the exterior faces of the walls. In the case of dwellings, cellars, unenclosed porches, or attics not used for human occupancy shall not be included. Further, floor area intended or designed for the parking of motor vehicles or for the housing of heating and ventilation equipment shall not be included.
- Group home: A nonprofit boarding home, licensed by the Commonwealth of Massachusetts, for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may provide some combination of personal care, social or counseling services, and transportation.
- Hazardous material: Any substance which is listed in, but not limited to, the EPA priority pollutants as described in section 307(a) of the Clean Water Act, as amended.
- Home occupation: An occupation, business, trade, service or profession which is incidental to and conducted in a dwelling unit, by a permanent resident thereof. No more than one home occupation can be conducted on any premises.
- Hospital: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illnesses, disease, injury and other conditions, and related facilities, such as laboratories, outpatient facilities, training facilities, offices, and staff residences.
- Hotel: A building occupied as a temporary abode of individuals, in which provision is not made for cooking in any room, and in which there are more than twenty (20) sleeping rooms, a public dining room, and a general kitchen.
- Inn: An establishment where transient guests are lodged for a consideration and where they may receive for a consideration meals, maid or room service, telephone or desk service and all other necessities, conveniences and facilities.
- Junk: Any article or material or collection thereof, which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall be considered junk.

**Junk motor vehicle:** A motor vehicle which is worn out, cast off, or discarded and which is ready for dismantling or destruction, or which has been collected or stored for salvage, or for stripping in order to make use of the parts thereof. Any parts from such a vehicle shall be considered a junk motor vehicle under this Ordinance.

**Junkyard or automobile graveyard:** The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof, licensed therefore.

**Kennel:** Premises used for the harboring and/or care of more than three (3) dogs or other domestic, non-farm animals (three (3) months old or over). Use shall be so classified regardless of the purpose for which the animals are maintained, whether fees are charged or not, and whether the use is a principal or accessory one.

**Light manufacturing:** Fabrication, assembly, processing, finishing work or packaging, but excluding fish processing.

**Loading space, off-street:** Space located on the same lot with a main building, or contiguous to a group of buildings, for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filed. Such space shall abut a street, alley, or other appropriate means of ingress or egress.

**Lot:** Any lot or plot, in one ownership and not divided by a street and not within the limits of a public or private way upon which the lot abuts, occupied by one building and its accessory buildings and uses and including such open spaces as are required by this ordinance.

**Area:** The horizontal area of the lot exclusive of any area in a street or recorded way open to public use. At least eighty (80) percent of the lot area required for zoning compliance shall be contiguous land other than that under any water body, bog, swamp, wet meadow, marsh, or other wetland, as defined in G.L. c. 131, s.40, as amended.

**Corner:** A lot with two (2) adjacent sides abutting upon streets or other public spaces.

**Depth of:** The mean distance from a street line of the lot to its opposite rear line, measured in Frontage the mean general direction of the side lines of the lot.

**of:** A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and actual physical vehicular access to the lot, said line to be measured continuously along a single street for the entire width of the lot. Vehicular access to a building site on the lot shall be exclusively through the legal frontage of the lot.

**Line:** The dividing line between lots. A rear lot line is the lot line opposite to the street line, or in the case of a corner lot, the lot line elected by the owner, provided that it be indicated on the plans filed with the Inspector of Buildings as provided hereafter. On a corner lot, only one line can be considered a street line; all other lines shall be considered side lines.

**Width of:** The horizontal distance between side lot lines, measured parallel to the lot frontage at the front yard setback line.

**Low-level or radioactive waste facility:** A facility the primary purpose or principal activity of which is the commercial collection, processing, reprocessing, storage, burial, incineration, disposal or brokerage of radioactive wastes, including but not limited to waste classified as low-level radioactive waste.

**M.G.L.:** The General Laws of the Commonwealth of Massachusetts, as amended from time to time.

Major recreational equipment: Campers, trailers, boats, vessels or other recreational vehicles or equipment.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but not including the following:

Garbage and refuse incineration or disposal otherwise of material not originating on the premises, except by the City of New Bedford; distillation of bones, rendering or fat or reduction of animal matter; manufacturing of glue; oil refining; bulk storage of petroleum products; foundries, manufacture of large machine parts, metal working; taberues; manufacture of cement products and cement mixing; processing, storage and distribution of asphalt products; slaughterhouses; sand gravel and stone processing plants; trailer parks and mobile homes; airports; piggeries.

Medical center or clinic: A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

Mobile home: A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

Motel: A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such motel may claim residency at such location.

Motor vehicle: An automobile, truck, motorcycle, or other trackless, self-propelled vehicle designed primarily to transport persons or property over public streets and highways.

Motor vehicle body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies or fuel sales.

Motor vehicle general repair: An establishment, garage or work area enclosed within a building where any automobile repair, excluding body work and painting may occur, but does not include the storage of vehicles for the cannibalization of parts or fuel sales.

Motor vehicle general or body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle and their bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts or fuel sales.

Motor vehicle light service: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs, or storage of vehicles for parts.

Motor vehicle light services/convenience store: A light service station which also engages in the over-the-counter sale of non-automobile related products. This use shall adhere to the regulations for specific uses for both commercial/business facilities and motor vehicle light service, whichever is greater. This use shall also adhere to the off-street parking regulations for retail businesses.

Municipal facilities: Facilities owned or operated by the City of New Bedford.

Nursing or convalescent home: Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

Oceanarium: A large aquarium for the exhibition or study of marine life.

Place of assembly: A facility as defined in the State Building Code, 780 CMR 1.00 et seq.

Private garage: A garage for private use, whether as a principal or accessory use of a lot, provided that no business, service or industry connected directly or indirectly with motor vehicles is carried on, and provided that such garage shall not contain space for more than one motor vehicle for the first one thousand (1,000) square feet of lot area, and one additional motor vehicle for each additional two thousand (2,000) square feet of lot area, but in no event shall said garage contain space for more than three motor vehicles. One commercial vehicle of one and one-half (1/2) tons capacity or less may be stored by its owner in such owner's private garage, but space shall not be leased for a commercial vehicle.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food establishments."

Drive-through: A restaurant with a window for food service to motor vehicles.

Fast-food or take-out: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food in edible or disposable containers directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises which usually requires ordering food at a counter or drive through lane or window.

Retail: A facility selling goods but not specifically listed in 2230, the Table of Use Regulations.

Salvage yard: Property where motor vehicles are junked, dismantled or stored for later dismantling or distribution, licensed therefore.

Sign: Any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any building surfaces other than windows which are internally illuminated or decorated with gaseous tube or other lights are considered "signs." The following, however, shall not be considered signs within the context of this ordinance:

(a) Flags and insignia of any government except when displayed in connection with commercial promotion.

(b) Legal notices, or informational devices erected or required by public agencies.

(c) Temporary devices erected for a charitable or religious cause, provided they are removed within seven (7) days of erection.

(d) Temporary displays inside windows, covering not more than thirty (30) percent of window area, illuminated by building illumination only.

(e) Standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline.

(f) Integral decorative or architectural features of a building, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights.

(g) Devices identifying a building as distinct from one (1) or more of its occupants, such device being carved into or attached in such a way as to be an integral part of the building, not illuminated separate from building illumination, without color contrasting with sign background, and not exceeding four (4) square feet in area.

(h) Address identification through numerals or letters not exceeding three (3) inches in height.

(i) "For Sale," "For Rent" or political signs.

(j) window displays of merchandise or signs incidental to the display of merchandise.

Sign, area of: Includes all lettering, wording and accompanying design and symbols, together with the background, whether open or enclosed, on which they are displayed. (This includes the spaces between the sections of a free-standing sign.) The area does not include supporting framework, bracing or decorative structure. When a sign is painted upon or applied to a building, the area includes all lettering, wording and accompanying designs or symbols together with any background of a different color than the natural color of the building. When individual letters or figures are attached or painted on a surface, a building, canopy, awning, wall or window, the area is that of the smallest rectangle or other geometric shape that encompasses all of the letters or symbols.

Sign, canopy: A sign on or attached to a permanent overhanging shelter that projects from the face of a building and is supported only partially by the building.

Sign, free-standing: A sign not supported by a wall or screening surface.

Sign, marquee: A sign on or attached to a permanent overhanging shelter that projects from the face of a building and is supported entirely by the building.

Sign, off-premises: A sign that advertises activities, goods, products, etc., that are available elsewhere than within the building or on the lot where the sign is located.

Sign, on-premises: A sign which advertises activities, goods, products, etc., that are available within the building or on the lot where the sign is located.

Storage Shed: A covered structure, with no more than 120 square feet of floor space and a height no greater than 12 feet.

Story: That part of a building between the top of a finished floor and the top of the finished floor or roof next above.

A "ground story" or "first story" is the lowest story entirely above the mean grade of the adjoining ground.

An "upper story" is a story above the first story.

A "mezzanine story" is a full story wherever it occupies more than one-third (1/3) of the area of the story in which it is situated.

An "attic" is the space between the top story and a pitched roof.

Street: An accepted city way, or a way established by or maintained under county, state, or federal authority, or a way established by a subdivision plan approved in accordance with the subdivision control law actually constructed to specifications or for which adequate security exists to construct such way.

Street line: The dividing line between a street and a lot.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like.

**Tattooing:** Any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing.

**Tire recycling and re-treading:** The process by which used tires are cut, torn, ripped or mutilated with the intention of being used in the manufacture of new tires or the process by which new tire treads are affixed to used tires.

**Trailer:** Any so-called automobile trailer, trailer coach, mobile home, including any portable structure, means of conveyance, or vehicle so designed, constructed, altered or converted in any manner as to permit occupancy thereof for dwelling or sleeping purposes, storage, or conducting business. The term "trailer" shall exclude construction site trailers.

**Trailer camp or park:** Any lot, parcel or tract of land, upon which two (2) or more trailers, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such an accommodation.

**Transport terminal:** Terminal facilities for handling freight with or without maintenance facilities.

**Warehouse:** A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

**Wireless Communication Facilities (WCF):** A facility for the provision of wireless communication service including, but not limited to, towers, monopoles, satellite dish(es) over three (3) feet diameter, antennas, antennas attached to existing structures, and accessory structures, if any, which facilitate the provision of wireless communication service.

**Wireless Communication Service (WCS):** The provision of the following types of services: cellular telephone service, personal communication service and enhanced mobile radio service.

**Yard:** A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

A "front yard" is a required open unoccupied space, within and extending the full width of the lot, between the street line and the front of a building.

A "side yard" is a required open unoccupied space within the lot between a side lot line, not a street line, and the parts of the building nearest to such lot line. Such a side yard shall extend for its required width from the street line or the front yard to the rear yard or its equivalent or to another street.

A "rear yard" is a required open unoccupied space, the full width of the lot, lying between the extreme rear wall of the building and the rear line of the lot or the middle line of a public street or private way in case the lot borders on such street or way, except as hereinafter provided. In the case of a triangular lot with only one side fronting on a street, the rear yard is the open unoccupied space between the extreme rear wall of the building and a line half way between it and the point of intersection of the side lines of the lot, except as hereinafter provided. (Ord. of 12-23-03, § 1)

## **SECTION 2000. USE AND DIMENSIONAL REGULATIONS.**

### **2100. DISTRICTS.**

**2110. Establishment.** For the purposes of this Ordinance, the City of New Bedford is hereby divided into the following districts:

Residence A District (RA)  
 Residence B District (RB)  
 Residence C District (RC)  
 Residence AA District (RAA)  
 Mixed Use Business District (MUB)  
 Planned Business District (PB)  
 Industrial A District (IA)  
 Industrial B District (IB)  
 Industrial C District (IC)  
 Waterfront Industrial District (WI)  
 Downtown Business Overlay District (DBOD)  
 Riverside Avenue Mill Overlay District (RAMOD)

The following overlay districts are also hereby created:

Flood Hazard Overlay District  
 Downtown Overlay District  
 Waterfront Overlay District  
 Wamsutta Mill Overlay District (WMOD)  
 Cove Street Mill Overlay District (COSMOD)  
 Mott-David-Ruth Mill Overlay District (MDRMOD)

Except as otherwise provided herein, the boundaries of these districts are defined and set forth on the map entitled, "Zoning Map, City of New Bedford, dated \_\_\_\_\_, as may be subsequently amended by vote of the City Council. This map is on file with the City Clerk. The zoning map, with all explanatory matter thereon, is hereby made a part of this Ordinance. The boundaries of all land use zoning districts adjoining tidal waters shall extend to the low water mark as defined in regulations promulgated pursuant to G.L. c. 91 by the Massachusetts Department of Environmental Protection. (Ord. of 12-23-03, § 1; Ord. of 6-7-04, § 1; Ord. of 1-27-06, § 1)

**2120. Boundary Definition.** Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at street, railroad, or utility easement center or layout lines, boundary or lot lines at water body shoreline or the channel of a stream, shall be construed to be actually at those lines; when shown approximately parallel, perpendicular, or at an angle to such lines shall be construed to be actually parallel, perpendicular, or at an angle thereto. When not located in any other way, boundaries shall be determined by scale from the map. (Ord. of 12-23-03, § 1)

## **2200. USE REGULATIONS.**

**2210. General.** No structure shall be erected or used or land used except as set forth in Section 2230. **"Table of Use Regulations"**, unless otherwise provided by this Ordinance or by statute. Uses not expressly provided for herein are prohibited. Not more than one principal structure shall be placed on a lot, except in accordance with Section 2330.

Symbols employed below shall mean the following:

- Y - A permitted use.
- N - An excluded or prohibited use.
- BA - A use authorized under special permit from the Board of Appeals as provided under Section 5300.
- CC - A use authorized under special permit from the City Council as provided under Section 5300.
- PB - A use authorized under special permit from the Planning Board as provided under Section 5300.

2220. **Applicability.** When an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern.

2230. **Table of Use Regulations.** See Appendix A. (Ord. of 12-23-03, § 1)

## 2300. ACCESSORY BUILDINGS AND USES.

2310. **General.** Any use permitted as a principal use is also allowed as an accessory use, as are others customarily accessory and incidental to permitted principal uses. Accessory uses are permitted only in accordance with lawfully existing principal uses. An accessory use may not, in effect, convert a principal use to a use not permitted in the zoning district in which it is located. Where a principal use is permitted under special permit, its accessory use is also subject to the special permit. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 5400, shall also require site plan review and approval.

### 2320. Accessory Uses.

2321. Accessory Scientific Uses. Uses, whether or not on the same parcel as activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit by the Board of Appeals, provided that the Board of Appeals finds that the proposed use does not substantially derogate from the public good.

2322. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than two persons in an owner occupied single-family dwelling by the owner/occupant thereof shall be a permitted accessory use. The renting of rooms and/or furnishing of board to three or more persons in an owner occupied single-family dwelling by the owner/occupant thereof shall be deemed a boarding house subject to the provisions of Section 2230, herein.

2323. Family Day Care Homes. In all districts, family day care may be provided as an accessory use upon the issuance of special permit by the Board of Appeals.

2324. In residence districts, by special permit from the Board of Appeals, off-street parking facilities for more than five (5) automobiles, provided that said parking facilities are on a lot directly across the street from the building they are intended to serve and that said parking facilities shall be used only by the occupants of the building and by persons visiting or doing business with said occupants.

2325. In residence districts, by special permit from the Board of Appeals, joint use of off-street parking facilities by buildings on contiguous lots provided that said parking facilities shall be used only by the occupants of the buildings they are intended to serve and by persons visiting or doing business with said occupants. (Ord. of 12-23-03, § 1)

### 2330. Accessory Structures.

2331. Private Garages. Where a private garage constitutes an attached part of the principal dwelling, the minimum setback, side yard and rear yard requirements of the district shall be provided. Where the private garage is detached and accessory, the garage shall be at least ten (10) feet from the principal building, except for garages which meet the fire rating standards of the Massachusetts Building Code for attached garages, in which case the separation requirement is waived. Side yard requirements for detached accessory garages shall be the same as for the principal dwelling. The minimum distance from the rear lot line for detached garages shall be four (4) feet.

2332. Accessory buildings or structures, including private garages, may occupy in the aggregate not over forty (40) per cent of the required rear yard area.

2333. Accessory buildings or structures shall not be erected over eighteen (18) feet in height, as measured from the mean average grade of the proposed location of the structure, prior to construction.

2334. No part of such accessory buildings or structures shall be located within thirty (30) feet of the street line on which the principal structure fronts, and, if located within fifty (50) feet from the front street line of the lot, no part of such buildings or structures shall be located within twelve (12) feet of any side lot line intersecting such street. If located in excess of fifty (50) feet from the front street line, the side yard setback shall conform to the requirements of the principal dwelling.

2335. In the case of corner lots less than fifty (50) feet in width, a garage not over twenty-four (24) feet in depth may be placed at the rear of the lot to comply with Section 2334 as nearly as possible, provided that in no case shall the said garage be located less than twenty (20) feet from the street line bounding the longer side of the lot and not less than twelve (12) feet from the lot line intersecting said street line. Such restriction may be waived by mutual agreement between the adjoining property owners, secured by and filed with the Inspector of Buildings.

2336. No trailer shall be occupied for dwelling or sleeping purposes within any residential district, except as allowed pursuant to M.G.L. 40A, § 3. A trailer may be permitted to locate within any district other than a residential district provided a special permit is granted by the City Council after a public hearing, upon a finding that the placement and occupancy of the trailer will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 5300 herein.

2337. The initial term and subsequent terms of a special permit for a trailer shall expire after two years. In the event such special permit is renewed, after a public hearing, upon a finding that the placement and occupancy of the trailer will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 5300 herein, the City Council shall promptly notify the Inspector of Buildings. Subsequent special permit issuances for existing trailers, if any, shall be granted after certification by affidavit is made by the applicant that the trailer has not been extended, enlarged, or altered to increase its original dimensions, or use as defined in the initial special permit application, and that the need for the special permit still exists and there has been no change in the use or circumstances for which the special permit was originally granted.

2338. Protection of swimming pools and fish ponds. Every person owning land on which there is situated an inground swimming pool, an aboveground swimming pool four (4) feet or more deep, a fish pond or other natural or man-made body of water which constitutes an obvious hazard, having a depth at any point of more than two (2) feet, shall cause the same to be completely enclosed by a fence. All fence openings or points of entry into the land area shall be equipped with gates. The fence and gates shall be four (4) feet in height above the ground level. All gates shall be equipped with self-closing and self-latching devices placed at the top of the gate. Swimming pools or fish ponds, containing more than twenty-four (24) inches of water in depth, whether public or private, shall be located in such a way that it will not be closer than three (3) feet to any building, six (6) feet to any property line and shall not extend into any front yard or beyond the front sidewall of the dwelling on said lot.

2339. Barbed Wire. Barbed wire is prohibited in all residential zones, or on property lines abutting residential zones below a height of eight (8) feet above grade. (Ord. of 12-23-03, § 1)

2339A. Structures used for kennels or the housing of animals. Any structure used for a kennel or for the housing of animals shall be located at least twelve (12) feet from any lot line, street line or dwelling and shall not extend into any front yard or beyond the front sidewall of any dwelling.

(Ord. of 11-12-04, § 1)

2340. **Accessory Dwelling Units.** For the purpose of enabling owners of single family dwellings larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership, the Board of Appeals may grant a special permit in accordance with the following requirements.

2341. Accessory dwelling units may be allowed on special permit, which shall lapse every two years, in accordance with Section 5300, and provided that each of the following additional criteria are met.

2342. A plot plan, prepared by a Registered Land surveyor, of the existing dwelling unit and proposed accessory dwelling unit shall be submitted, showing the location of the building on the lot, proposed accessory dwelling unit, location of any septic system and required parking. A mortgage inspection survey, properly adapted by a surveyor, shall be sufficient to meet this requirement;

2343. Certification by affidavit shall be provided that while said accessory dwelling unit is occupied, the primary dwelling unit shall be occupied by the owner of the property;

2344. Not more than one accessory dwelling unit may be established on a lot. The accessory dwelling unit shall not exceed 1000 sq. ft. in floor space and shall be located in the existing residential structure on the premises;

2345. The external appearance of the structure in which the accessory dwelling unit is to be located shall not be significantly altered from the appearance of a single-family structure, in accordance with the following:

2345.a. Any accessory dwelling unit construction shall not create more than a 15% increase in the gross floor space of the structure existing as of date of enactment, 12-23-03.

2345.b. Any stairways or access and egress alterations serving the accessory dwelling unit shall be enclosed, screened, or located so that visibility from public ways is minimized;

2345.c. Sufficient and appropriate space for at least one (1) additional parking space shall be constructed by the owner to serve the accessory dwelling unit. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway.

2346. The initial term and subsequent terms of a special permit for an accessory dwelling unit shall expire after two years. In the event such special permit is not renewed, the Board of Appeals shall promptly notify the Inspector of Buildings. Subsequent special permit issuances for existing accessory dwelling unit, if any, shall be granted after certification by affidavit is made by the applicant that the accessory dwelling unit has not been extended, enlarged, or altered to increase its original dimensions, as defined in the initial special permit application, and that the need for the special permit still exists and there has been no change in the use or circumstances for which the special permit was originally granted.

2347. Special permits for an accessory dwelling unit may be issued, after a public hearing, upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 5300 herein. (Ord. of 12-23-03, § 1)

**2400. NONCONFORMING USES AND STRUCTURES.**

**2410. Applicability.** This zoning ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning ordinance, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder. (Ord. of 12-23-03, § 1)

**2420. Nonconforming Uses.** The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

2421. Change or substantial extension of the use;

2422. Change from one nonconforming use to another, less detrimental, nonconforming use. (Ord. of 12-23-03, § 1)

**2430. Nonconforming Structures, Other Than Single and Two Family Structures.** The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

2431. Reconstructed, extended or structurally changed;

2432. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent;

The reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals. (Ord. of 12-23-03, § 1)

**2440. Nonconforming Single and Two Family Structures.** Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and the issuance of a building permit, where applicable. In the event that the Inspector of Buildings determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by finding (which shall not require a super majority), allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. (Ord. of 12-23-03, § 1)

**2450. Abandonment or Non-Use.** A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning ordinance. (Ord. of 12-23-03, § 1)

**2460. Catastrophe.** Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe, provided that such reconstruction is completed within twelve months after such catastrophe, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure unless a larger volume or area is authorized by special permit from the Board of Appeals. Such time for reconstruction may be extended by the Board of Appeals for good cause. (Ord. of 12-23-03, § 1)

2470. **Reversion to Nonconformity.** No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use. (Ord. of 12-23-03, § 1)

**2500. HOME OCCUPATIONS.**

2510. **Home Occupations As of Right.** Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by the owner of that dwelling; provided, however, that all of the following conditions shall be satisfied:

2511. The occupation or profession shall be carried on wholly within the principal building.

2512. Not more than thirty (30) percent of the floor area of the residence shall be used in the home occupation.

2513. No person not a member of the household shall be employed on the premises in the home occupation.

2514. The home occupation shall not serve clients, customers, pupils, salespersons, or the like on the premises.

2515. There shall be no sign, exterior display, no exterior storage of materials, and no other exterior indication of the home occupation, or other variation from the residential character of the premises.

2516. No use or storage hazardous materials in quantities greater than associated with normal household use shall be permitted.

2517. Traffic generated shall not exceed volumes normally expected in a residential neighborhood.

2518. Only one home occupation may be conducted on the premises. (Ord. of 12-23-03, § 1)

2520. **Home Occupations by Special Permit.** Businesses or professions incidental to and customarily associated with the principal residential use of premises may be engaged in as an accessory use by the owner of that dwelling upon the issuance of a special permit by the Board of Appeals; provided, however, that all of the following conditions shall be satisfied:

2521. The occupation or profession shall be carried on wholly within the principal building, or within a building or other structure accessory thereto, which has been in existence at least five (5) years, without extension thereof.

2522. Not more than thirty (30) percent of the combined floor area of the residence and any qualified accessory structures shall be used in the home occupation.

2523. Only one home occupation may be conducted on the premises.

2524. The home occupation may serve clients, customers, pupils, salespersons, or the like on the premises, if the Board of Appeals determines that the neighborhood will not be detrimentally affected.

2525. Not more than one (1) person not a member of the household shall be employed on the premises in the home occupation.

2526. An unlighted sign of not more than three (3) square feet in area may be permitted. The visibility of exterior storage of materials and other exterior indications of the home

occupation, or other variation from the residential character of the premises, shall be minimized through screening and other appropriate devices.

2527. Parking generated by the home occupation shall be accommodated off-street, other than in a required front yard, and such parking shall not occupy more than 35% of lot area.

2528. The use or storage of hazardous materials in quantities greater than associated with normal household use shall be subject to design requirements to protect against discharge to the environment. (Ord. of 12-23-03, § 1)

## **2600. LOW LEVEL RADIOACTIVE WASTE.**

2610. **Low-level radioactive waste or nuclear waste facilities.** No facility may be located within the City of New Bedford, the primary purpose or principal activity of which is the commercial collection, processing, reprocessing, storage, burial, incineration, disposal or brokerage of radioactive wastes, including but not limited to waste classified as, low-level radioactive waste. (Ord. of 12-23-03, § 1)

## **2700. DIMENSIONAL REGULATIONS.**

2710. General. No structure shall be erected or used, premises used, or lot changed in size or shape except in conformity with the requirements of this section, unless exempted by this Ordinance or by statute.

2711. Lot change. No existing conforming or nonconforming lot shall be changed in size or shape except through a public land taking or donation for road widening, drainage, utility improvements or except where otherwise permitted herein, so as to violate the provisions of this ordinance with respect to the size of lots or yards or to create a non-conformity or increase the degree of nonconformity that presently exists.

2712. Merger of lots. Adjacent lots held in common ownership on or after the effective date of this section shall be treated as a single lot for zoning purposes so as to minimize nonconformities with the dimensional requirements of this ordinance. Notwithstanding the previous sentence, adjacent lots in common ownership may be treated as separate lots for zoning purposes upon a finding by the zoning enforcement officer that the owner of said lots has expressly exhibited the intent to maintain the lots as separate. In making said finding the zoning enforcement officer shall rely on the following factors:

2712.a. The existence and maintenance of walls or fences along the original lot lines;

2712.b. The fact that the lots are separately assessed for tax purposes;

2712.c. The placement of structures on the various lots

The manner in which said lots were acquired or the fact that said lots were separately described on a deed shall not be considered by the zoning enforcement officer in making said finding.

2713. Recorded Lots. A lot or parcel of land having an area or frontage of lesser amounts than required in the following schedule of dimensional requirements may be considered as satisfying the area and frontage requirements of this section provided such lot or parcel of land was shown on a plan or described in a duly recorded deed or registered at the time of adoption of this ordinance and did not at the time of adoptions of adjoin other land of the same owner available for use in connection with such lot or parcel. (Ord. of 12-23-03, § 1)

2720. **Table of Dimensional Requirements.** See Appendix B. (Ord. of 12-23-03, § 1)

2730. **Dimensional Variation.** The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height and sidelines upon finding that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. (Ord. of 12-23-03, § 1)

2740. **Vision Clearance on Corner Lots in Residence Districts.** On a corner lot no fence, wall or structure more than three and one-half (3 ½) feet high above the plane of the established grades of the streets shall be erected on a front or side yard herein established which is included within the street lines of the intersecting streets and a straight line connecting said street lines at points which are twenty (20) feet distant from their point of intersection, measured along said street line, and no trees or hedges which will materially obstruct the view of a driver of a vehicle approaching the street intersection shall be placed or maintained within such area. (Ord. of 12-23-03, § 1)

2750. **Yards in Residence Districts.**

2751. Front yards. No story or part of any building except projecting eaves or uncovered steps shall be erected nearer to the street line of any street on which it fronts than the average alignment of the corresponding stories or parts of existing buildings within two hundred (200) feet on each side of the lot and within the same block and district. Where there is a building on one or both of the adjoining lots, the front yard for a building shall have a depth equal to the average of the front yard depths of the two (2) adjoining lots. A lot without a building shall be counted as having a front yard of the depth required by this ordinance. If there are no existing buildings on the same side of the street, the average setback alignment of corresponding stories within two hundred (200) feet on each side of and directly opposite the lot shall govern. Nothing in this ordinance shall require any story or part of a building to set back more than fifteen (15) feet from any street line. One street frontage of a corner lot shall be exempt from these provisions as provided in subsection 2752. The front yard of a lot shall remain clear of debris and junk.

2752. Where the alignment of a building is not controlled by subsection 2751, between every building and the line of the street upon which it fronts there shall be a front yard of a clear depth of fifteen (15) feet, except that on one side of a corner lot a yard of a clear depth of not less than ten (10) feet shall be provided, in which case this distance shall not be considered in determining the front yard depths on such street.

2753. Rear Yards. There shall be a rear yard on every lot and it shall be at least thirty (30) feet deep behind a dwelling, except that a ground story deck or porch, without a permanent roof, a patio, or a pool (including any projections therefrom) may extend to six (6) feet of a rear lot line. An unattached private garage or shed may extend to four feet of a rear yard. Unless referenced in this Code, nothing may be placed or constructed in or upon the ground within six feet of a rear lot line. Notwithstanding the previous sentence, a fence may be constructed near or along a rear lot line and vegetation may also be planted within six feet of a rear lot line.

2754. Where a lot is more than one hundred (100) feet deep, one-half (1/2) of the additional depth of the lot in excess of one hundred (100) feet shall be added to said rear yard depth; but in no case shall a rear yard depth in excess of forty (40) feet be required. The setbacks referenced in the previous section shall also apply to this section.

2755. Side Yards. There shall be a side yard on every lot and it shall be at least eight (8) feet on one side and twelve (12) feet on the other side. The side yard shall be unobstructed from the line

of the street to the rear lot line except that open porches, decks, steps, patios and pools (including any projections therefrom), which are located behind the dwelling within the rear yard, may extend to six feet of a side lot line, driveways may extend to four feet of a side lot line and sheds, which are located behind the dwelling within the rear yard may extend to four feet of a side yard. (Ord. of 12-23-03, § 1)

**2760. Cornices and Belt Courses.**

2761. A cornice shall not project more than one-third (1/3) of the width of a required open space.

2762. A belt course or other ornamental feature shall not project more than nine (9) inches into a required open space. (Ord. of 12-23-03, § 1)

**2770. Courts.**

2771. If any part of a story of a non residence building is used for offices, studios or workshops which are not lighted from the street or the rear yard, there shall be a court starting not more than fifty (50) feet from the main exterior walls of that story.

2772. If any part of a story is used for living or sleeping rooms which are not lighted from the street or the rear yard, such court shall be required starting not more than two (2) rooms or thirty-five (35) feet from the main exterior walls of that story.

2773. An inner court shall be at least one-third (1/3) as wide as it is high, measured from the sills of the lowest windows served by it to the average level of the tops of the enclosing walls, and shall be at least twice as long as its required width or of an equivalent area, but no court shall be less than ten (10) feet in width.

2774. The minimum width of an outer court shall be double that required in this section for an inner court.

2775. A cornice or belt course shall not project more than six (6) inches into any inner court. (Ord. of 12-23-03, § 1)

**2780. Height of Buildings.** The provisions governing the height of buildings in Appendix B shall apply to chimneys, cooling towers, flagpoles, elevator bulkheads, skylights, ventilators, and other necessary appurtenant features usually carried above roofs; to domes, stacks or spires and also to wireless communications facilities. (Ord. of 12-23-03, § 1)

**SECTION 3000. GENERAL REGULATIONS.**

**3100. PARKING AND LOADING.**

**3110. Applicability.** Every building erected, enlarged, converted, or relocated and each use or change of use of land shall be provided with off-street parking spaces and off-street loading spaces in accordance with Section 3130, Table of Parking Requirements.

3111. In the event of the enlargement of a structure existing on the effective date of the ordinance from which this section is derived, or the construction or relocation of additional structures on a lot, after such effective date, the regulations of this section shall apply only to the enlargement, construction or relocation thereof, except that any off-street parking and off-street loading facilities established to serve any buildings and any uses prior to such effective date shall not be reduced below the required number.

3112. For a building or premises used for combined purposes, the number of off-street parking spaces and off-street loading spaces shall be determined as the sum of the required number of spaces in each component of the combined use.

3113. Where the computation of required parking spaces and loading spaces result in a fractional number, the required parking spaces shall be the next whole number. (Ord. of 12-23-03, § 1)

3120. **Special Permit.** Any parking or loading requirement set forth herein may be reduced upon the issuance of a special permit by the Planning Board if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit. Such cases might include:

3121. Use of a common parking lot for separate uses having peak demands occurring at different times;

3122. Age or other characteristics of occupants of the facility requiring parking which reduces auto usage;

3123. Peculiarities of the use which make usual measures of demand invalid;

3124. Availability of on-street parking or parking at nearby municipally owned facilities.

3125. Where a special permit is granted, a reserve area, to be maintained indefinitely as landscaped open space, may be required sufficient to accommodate the difference between the spaces otherwise required and the spaces reduced by special permit. The parking/site plan shall show (in dotted outline) how the reserve area would be laid out in to provide the otherwise required number of spaces. (Ord. of 12-23-03, § 1)

3130. **Table of Parking and Loading Requirements.** See Appendix C. (Ord. of 12-23-03, § 1)

3140. **Location and Layout of Parking and Loading Facilities.** Off-street parking and loading, for facilities other than single or two family residences, may be provided in structures or in the open air, and shall be subject to the following regulations pertaining to their layout and location:

3141. Parking spaces shall be located on the same lot as the building or use where they are intended to serve, except that they may be provided on an adjoining lot in the same ownership.

3142. Where the provisions of subsection 3141 cannot be satisfied and the parking lot contains five (5) or more required spaces, the required parking spaces may be located on a lot in the same ownership within two hundred (200) feet of the building or lot they are intended to serve.

3143. Parking space for three or fewer vehicles may be provided in the form of a driveway on a lot; the improved surface may be extended to one (1) foot of the side line.

3144. Where a drive or aisle, other than a street, is required to maneuver a vehicle into or out of a parking space, such drive or aisle shall be at least twenty-two (22) feet wide for parking spaces situated at right-angles, or nearly right-angles to the aisle. For parking spaces situated at an angle of thirty (30) to sixty (60) degrees to the aisle, the required width of the aisle shall be at least fifteen (15) feet.

3145. Open-air off-street parking facilities may be located in required front, rear and side yards, except that in a residential district, no open-air off-street parking space shall be located in front of the dwelling or principal building. Notwithstanding the previous sentence, in cases where a garage faces the frontage of the dwelling and is located beneath the dwelling, open-air off-street parking may be located in front of the dwelling in a residential district provided that the dwelling is set back a minimum of twenty feet from

the front property line and provided that said parking occurs only within the driveway, the width of which shall not exceed the lesser of the width of said garage or eighteen feet. Any driveway in a residential district, requiring more than one curb cut, shall require Site Plan Approval. No driveway in a residential district shall exceed eighteen feet in width.

3146. When five (5) or more parking spaces are required on a lot, the provisions of Section 3300 shall apply. All spaces shall be laid out so that vehicles can enter or leave any parking space directly from a drive or aisle other than a street. Additionally, all spaces shall be laid out so the vehicles entering a street may do so facing the street.

3147. All parking spaces and loading areas or berths in the open-air and the access drives or aisles, shall be provided with a concrete or asphalt surface. Compacted gravel or stone shall be permitted only for single or two family residential dwellings.

3148. No off-street loading areas or berths shall be laid out in such a manner as will result in loading or unloading being carried on within a street right-of-way or other public property. Each area or berth shall be sufficient size as to accommodate the largest expected truck or tractor trailer common to the building use.

3149. Special Permit for Commercial Parking in Residential Districts. Commercial parking may be allowed on residentially zoned property, held in common ownership and located immediately adjacent to the commercial business to which it is to serve, upon the issuance of a special permit by the Zoning Board of Appeals, if the Board finds that said parking is not detrimental to public health and safety, and that said parking promotes a public benefit. (Ord. of 12-23-03, § 1)

3149A. A Special Permit for vehicular access to a building lot accessed from public way that does not constitute frontage of the lot. Upon the issuance of a special permit by the Zoning Board of Appeals, vehicular access may be allowed from a public way that does not constitute the legal frontage of the subject lot if said lot is residentially zoned, if the proposed vehicular access is for the purpose of accessing parking that is located beside or behind the dwelling or principal building, and if the Board finds that said vehicular access promotes a public benefit and is not detrimental to public health and safety. Notwithstanding Section 5240 of Chapter 9 of the Code of Ordinances or any other provision to the contrary, no fee of any kind shall be charged or imposed by the Special Permit Authority to the applicant of a Special Permit applied for under this Section. (Ord. of 8-22-06, § 1)

3150. **Size of Parking Space.** A parking space shall be a rectangle at least nine (9) feet by twenty (20) feet exclusive of any required drive or aisle.

3151. The area of required off-street loading space is not to be included as off-street parking space in the computation of required off-street parking space. (Ord. of 12-23-03, § 1)

## 3200. SIGN REGULATIONS

3201. Purpose

(A) Signs constitute a separate and distinct use of the land upon which they are placed and affect the use of adjacent streets sidewalks and other public places and adjacent private places open to the public. The unregulated construction, placement and display of signs constitute a public nuisance detrimental to the health, safety, convenience and welfare of the residents of the city.

(B) The purpose of article 3200 is to establish reasonable and impartial regulations for all exterior signs and those interior signs designed to attract the attention of persons located outdoors in order to: reduce traffic hazards caused by such unregulated signs which may distract and confuse , and impair the visibility of, motorists and pedestrians; ensure the effectiveness of public traffic signs and

signals; protect property values by ensuring the compatibility of property with that surrounding it; provide an attractive visual environment throughout the city; protect the character and appearance of the various neighborhoods in the city; attract tourists to the city; protect the public investment in streets, highways, and other public improvements; and protect and improve the public health, safety, and general welfare. Additionally it is intended to protect the Central Business District and Historic District in accordance with the purposes stated in Section 3200AA.

(C) The regulations contained in this Section advance these significant government interests and are the minimum amount of regulation necessary to achieve them. (Ord. of 12-23-03, § 1)

**3210. General Regulations.**

This sign ordinance shall apply to all City signs and their supporting devices, including signs located within the Chapter 40C Historic District. Signs in the Historic District will require approval from the New Bedford Historical Commission.

This ordinance shall not apply to signs erected by government agencies.

Any sign or any related frame, structure or mounting device, deemed to be abandoned by the Inspector of Buildings must be removed from the premises by the owner of the premises upon cessation of the business, activity, trade, product or service.

Any sign, display or device allowed in this section may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with all other requirements of this chapter. (Ord. of 12-23-03, § 1)

**3220. Prohibited signs.**

The following signs are prohibited:

3221. Any sign which may be confused with or construed as a public safety device or sign or traffic or emergency light because of its color, shape or design.

3222. Any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and temperature.

3223. Signs mimicking the appearance or copy of traffic signs or signals.

3224. Revolving signs.

3225. Portable signs mounted on wheeled trailers

3226. Signs constructed, mounted or maintained upon the roof of any building.

3227. Off-Premises Signs: The construction of new off-premises signs, including bill boards, is prohibited throughout the city and the city may not issue permits for their construction or relocation. (Ord. of 12-23-03, § 1)

**3230. Permit required.** The following types of signs require a permit:

**3240. Signs extending over a street layout.** No person shall attach to or maintain on any building, structure or other support or otherwise locate or maintain any sign, board or other device in the nature of a notice, designation or other advertisement, so that it shall extend or project over the sidewalk of any street in the city, except under a permit therefore and in compliance with this Section.

3241. Display of banners. No banner shall be displayed across a street without the application to and issuance by the City Clerk, who shall consult with the Fire Department prior to the issuance of a permit.

3242. Awning, shade; minimum height; maximum projection. No awning or shade shall be placed or maintained on any building so as to project into the sidewalk area of a street, without a permit from the city clerk. All such awnings or shades shall be supported from above, and shall not be less than eight (8) feet above the level of the sidewalk over which they are placed, and shall not reach within twenty-four (24) inches of a line perpendicular to the outer edge of the curbing of said sidewalk. Nothing herein shall be construed to prohibit any marking or printing upon any awning constructed and maintained according to law. (Ord. of 12-23-03, § 1)

3250. **Regulations governing particular types of signs**

3251. Wall signs. Wall sign shall mean and include any sign attached to or erected against a building or other structure with the face of the sign in a plane parallel to such building or other structures and not projecting more than twelve (12) inches therefrom. Individual letters or devices cut into masonry or so affixed as to form an integral part of an exterior wall, shall not be considered wall signs if they are cut into or project out of said wall for a depth of one-fourth (1/4) of an inch or less.

3252. Area Restrictions for wall signs. In Mixed-Use Business districts, no wall sign shall have an area in square feet in excess of the product of the width of the building or storefront, as may be appropriate, times two (2). Such allowable area shall also include the length of the building, if on a corner lot, times two (2). This section shall not apply in the Central Business District (CBD) which is controlled by Section 3200A.

3253. Diagonal Walls. Where a wall upon which a wall sign is located is not parallel to the street toward which it faces, the length of the wall shall be calculated as the length of street frontage between two lines developed perpendicular to the street line from the ends of the diagonal wall.

3254. Ground Signs. Ground sign shall mean and include any sign having as supports wood or metal columns, pipes, angle iron framing, masonry, plastic or any combination of these materials unattached to any building or other structure.

3255. Area restrictions for ground signs. In Mixed-Use Business districts, no ground sign shall exceed one (1) square foot in area for each linear foot of street frontage of the lot upon which it is erected, but in no event shall such sign exceed twenty-five (25) square feet in area, nor shall there be a distance of more than ten (10) feet from the ground to the bottom of the sign and not more than fifteen (15) feet from the ground to the top of the sign.

3256. Location restrictions. No ground sign shall project over a public way, nor shall a ground sign be located closer than six (6) feet from a lot line. Only one ground sign shall be permitted per lot in a Mixed-Use Business district.

3257. Deleted.

3258. Shopping Center signs. Each shopping center in a Mixed-Use Business district is authorized to have a ground sign of the size allowed in Section 3212. This sign may identify the shopping center or list the several businesses therein, or a combination of the two. Separate ground signs identifying separate establishments are prohibited.

3259. Signs on non-conforming buildings. When a building used for business or industrial purposes exists in a residential district as a non-conforming use, wall signs in existence on the date of enactment of this ordinance may be maintained, repaired or replaced provided

in the latter case that the sign area is neither increased nor larger than would be allowed in a Mixed-Use Business district, whichever is smaller. Projecting, roof or ground signs are prohibited and cannot be replaced. (Ord. of 12-23-03, § 1)

**3260. Application for and issuance of permits.** Upon application, the City Clerk may issue permits to the owner, lessee, or occupant of a building, structure or other support, for activities regulated by Section 3203, subject to the conditions, limitations and requirements of this Section. Every applicant for a permit shall sign an agreement on the application blank to observe and conform with the conditions, limitations and requirements, subject to which the permit is granted. The City Clerk shall not grant any such permit until such Clerk shall have submitted the application therefore to the Inspector of Buildings, and such Inspector shall have approved the definite location and construction thereof. In each application the specifications of the proposed construction shall be stated and said superintendent may require a plan thereof to be filed along with the application.

**3261. Permit fee.** A fee of one dollar (\$1.00) shall be charged by the city clerk upon the issuance of any permit as required by the provisions of this Section.

**3262. Conditions of permits subject to amendment.** No right shall be acquired under any such general or special permission or any other provisions hereof, which shall prevent the governing body of the city at any time from withdrawing permission for the construction or maintenance of signs, awnings or shades over sidewalks, or from changing the conditions, limitations or requirements under which permission may be had for the same, or from repealing or amending this Section, or any ordinance in amendment thereof or in addition thereto. (Ord. of 12-23-03, § 1)

**3270. Exemptions.** The following types of signs are not required to obtain a permit from the City Clerk in accordance with this Section:

**3271.** A sign which does not weigh more than ten (10) pounds, neither shall permits be required for poles, wires, conduits, and appurtenances of railroad, telephone, water, gas and electric companies. (Ord. of 12-23-03, § 1)

**3280. General standards for signs requiring permits in accordance with section 3220.**

**3281.** No permanent sign hereafter erected shall extend or project into the street layout beyond a line drawn twenty-four (24) inches back from the curbline.

**3282.** No sign of cloth or fabric on a wood frame shall be maintained for a period of longer than thirty (30) days from the date of the temporary permit, and no sign of this type shall be permitted of a size greater than twenty (20) square feet, nor to project into the street layout more than five (5) feet. If the sidewalk beneath the proposed cloth sign is less than seven (7) feet in width, it shall not extend nearer than two (2) feet to the curbline. No permit for a cloth sign shall be renewed after expiration of thirty (30) days.

**3283.** The lower edge of all signs requiring a permit shall be not less than eight (8) feet above the sidewalk.

**3284.** Every sign permitted hereunder and the framework, braces, anchors and other supports therefore shall be constructed of materials and in a manner that shall be satisfactory to the Inspector of Buildings, and shall be kept in good repair, and in safe condition.

**3285.** Any sign to be illuminated from within shall be inspected and approved as to wiring by the inspector of wires before the issuance of a temporary permit. No sign now erected and maintained shall be removed and replaced without a new permit therefore, but this clause shall not prohibit repainting or repairs made to an existing sign, if the same are made without removal of sign from its supports. (Ord. of 12-23-03, § 1)

**3290. Temporary permit to erect sign.** The City Clerk is hereby empowered to grant a temporary permit to erect a sign, subject to the approval of the City Council, which has been approved by the inspector of wires as to wiring, if such approval is required, and provided that a permit for said sign has been issued by the by the Inspector of Buildings. As soon as a sign is erected under a temporary permit issued by the City Clerk the applicant shall notify the Inspector of Buildings that the sign is ready for inspection by the Inspector of Buildings. (Ord. of 12-23-03, § 1)

**3290A. Penalty for violation.** Any failure to comply with any conditions, limitations or requirements of this Section by any licensee, owner, or person maintaining any such sign, awning or shade, whether under general or special permission hereunder, shall constitute in each case a forfeiture of such permission or privilege. Any person erecting or maintaining any such sign, banner awning or other structure in violation of any provisions hereof, after five (5) days' notice to remove has been given, shall be punished as provided by law. (Ord. of 12-23-03, § 1)

**3290B. Indemnity of city.** Prior to obtaining a temporary sign permit from the City Clerk, the license applicant shall provide an insurance certificate, naming the City as an additional insured. Said insurance certificate shall be in an amount deemed adequate by the City Solicitor, to protect the City's interests. Prior to obtaining a temporary sign permit from the City Clerk, the license applicant shall also provide certification that the licensee, and every owner of, or person maintaining any such sign shall be liable for and shall satisfy, and hold the city harmless and indemnified against any liability on its part on account of any lawful damages to persons or property caused by the construction or maintenance of such sign, awning or shade over the sidewalk, or any negligence relative thereto. Failure to maintain adequate insurance or failure to maintain a valid certificate of indemnification shall void said license. Upon determining that a license has become void, the City Clerk shall notify the property owner in writing that failing to obtain a new license, within five (5) days from the date of the notice, will result in the City's removal of the sign, awning or shade, at the sole expense of the property owner and such owner shall be liable for reimbursing the city for all expenses of such removal paid by it. (Ord. of 12-23-03, § 1)

**3290C. Regulations for removal of signs.** Whenever any sign in the city is found by the Inspector of Wires or Inspector of Buildings, which is not constructed or maintained in accordance with the conditions, limitations and requirements thereof, said Inspector of Wires of Buildings may, or if in such Inspector's opinion it is for any reason unsafe or dangerous, or if in such Inspector's opinion the public interests require its removal, or if the use for the sign has been discontinued, the Inspector of Wires or Inspector of Buildings may order the owner of, or person maintaining or having the care of such sign to remove the sign and its appurtenances, and if the same is not so removed by within five (5) days from the date such order is given such person, the Inspector of Buildings shall cause the same to be removed, and such owner or other person shall reimburse the city for all expenses of such removal paid by it. In any case of emergency, said Inspector may cause any such sign to be forthwith removed, and the expense thereof shall be repaid the city by such owner or other person. (Ord. of 12-23-03, § 1)

### **3200AA. SIGNS IN THE CENTRAL BUSINESS DISTRICT.**

**3210AA. Purpose.** It is the purpose of this Section 3200A to promote the revitalization of the city's historic downtown by encouraging the imaginative integration of existing and proposed signage with buildings or architectural integrity and historical significance. This Section shall regulate, restrict, and place such limitations on the design, size, location and illumination of all permanent signs and advertising devices to assure that they will be appropriate to the land, building or use to which they are appurtenant. (Ord. of 12-23-03, § 1)

**3220AA. Area of applicability.** This Section 3200A is adopted for the regulation and restriction of all signs and advertising devices within the defined boundaries of the Central Business District (CBD) of the city, as described below: Beginning at the intersection of Walnut Street and County Street; thence northerly in the line of County Street to Kempton Street; thence easterly in the

line of Kempton Street, and continuing easterly in the line of the eastbound lane of U.S. Route 6, so-called, to the John F. Kennedy Memorial Highway; thence southerly in the line of said John F. Kennedy Memorial Highway to Rodman Street; thence westerly in the line of Rodman Street to Water Street; thence northerly in the line of Water Street to Elm Street; thence westerly in the line of Elm Street to Acushnet Avenue; thence southerly in the line of Acushnet Avenue to Union Street; thence easterly in the line of Union Street to Water Street; thence southerly in the line of Water Street to Walnut Street; thence westerly in the line of Walnut Street to the point of beginning at County Street. (Ord. of 12-23-03, § 1)

**3230AA. Permits required.** No sign in the Central Business District (CBD) shall be erected, altered or relocated after the effective date of the ordinance from which this section is derived without a permit issued by the Inspector of Buildings. Such permit shall not be issued until the Inspector of Buildings has reviewed the application specified in section 3240A for completeness and accuracy and has applied the review standards specified in section 3270A to such application. The Inspector of Buildings shall not refuse to issue such permit if the Inspector feels that the purpose of section 3210A has been met. (Ord. of 12-23-03, § 1)

**3240AA. Application.** Applicants shall submit the following to the Inspector of Buildings to obtain a building permit for a sign:

**3241AA.** A dimensioned drawing of the proposed sign. The drawing must indicate:

**3241AA.a.** The type of proposed sign (Wall sign, projecting sign, ground sign etc.).

**3241AA.b.** Dimensions of the proposed sign, including any designs and/or lettering.

**3241AA.c.** Material and method of attaching the sign to the building.

**3241AA.d.** Materials and methods of constructing ground signs.

**3241AA.e.** Materials from which the sign is to be constructed.

**3241AA.f.** scaled drawing of the area of the building or structure or lot where the proposed sign is to be located, showing accurate lineal footage and any other necessary dimensions (Ord. of 12-23-03, § 1)

**3250AA. Fees.** A sign permit fee shall be paid to the building inspector upon application for each sign permit in accordance with the following:

<b>Section 1.01</b>	<b>Total Sign Valuation</b>	<b>Fee</b>
	Less than \$20.00	No fee
	\$20.00 to \$500.00	\$5.00
	\$501.00 and over – for the first \$500.00	\$5.00
	plus for each \$100.00 of value	\$1.00
	(Ord. of 12-23-03, § 1)	

**3260AA. Sign design review board; appeals and exceptions.** There is hereby created a sign design review board comprised of the City Planner, a member of the New Bedford Historical Commission (to be appointed by such commission), a representative of the Central Business District retail merchants' industry (to be appointed by the mayor), a representative of the local sign industry (to be appointed by the mayor), and a representative of the City Council (to be appointed by the president of the City Council).

**3261AA.** Board members (except the City Planner) shall serve for terms of three (3) years, except that the initial terms of representatives of the merchants' industry and sign industry shall be one (1) and two (2) years, respectively. Board members who are city officials shall cease to serve upon termination of their city employment.

3262AA. The board shall annually elect its chairperson and secretary, keep written records of its proceedings and/or hearings, hold meetings and/or hearings as it deems necessary. Publications, advertisements of hearings, and notices shall be issued in the same manner as required under G. L. c. 40A, s. 11.

3263AA. The board shall have power to review the correctness of decisions of the Inspector of Buildings upon appeal of an aggrieved party, and alter such decisions when deemed incorrect; further, the board shall have power to make exceptions to the requirements of this Section: to avoid substantial hardship (economic or otherwise) to an applicant, and/or to promote the revitalization of the city's historic downtown area by encouraging imaginative integration of existing and/or proposed signage with the building's architectural character, upon application from an aggrieved party.

3264AA. Applicants seeking relief shall notify the City Planner and the City Clerk, in writing, of their intent to appear before the sign design review board. The board shall have thirty (30) days from the date of written receipt of the request to hold an advertised public hearing. The board shall have forty-five (45) days, from the date of written receipt of request, to issue a decision. Failure to act within forty-five (45) days shall constitute approval of the request. (Ord. of 12-23-03, § 1)

3270AA. **Standards.** The maximum allowable number of square feet of permanent signage for a business or use in the Central Business District (CBD) shall be determined by the distance of a building from the center line of the street it faces and by the business's street frontage. The following shall be used to compute maximum square footage of signs allowed for an individual business or use:

If	Then
The average distance of the building Face from the center line of the abutting Street is:	Multiply the number of feet of the use's street frontage by:
0 – 99 feet	3
100 – 399 feet	4
400 – and more	5

The Inspector of Buildings shall administer this Section in accordance with the following regulations:

3271AA. All signs must be stationary. With the exception of time and/or temperature messages, and appropriate lights during the holiday seasons, all signs may be lighted only with continuous light. No off-premise signs or billboards are permitted.

3272AA. No sign shall be attached to roofs, chimneys or smokestacks unless painted upon the same. No support for any sign may extend above the cornice line of the building to which it is attached. A non-functional (decorative) mansard shall not be considered part of the roof.

3273AA. The registered trademark of a specific product shall occupy no more than twenty-five (25) per cent of the area of a sign face. If the sale of the trademark product is the major business conducted on the premises, however, the trademark is not restricted to size.

3274AA. No sign shall be erected in any manner that will cover any windows or doors or otherwise obscure significant architectural elements on a building's facade, for example: Decorated terra cotta, decorated moldings, medallions, pilasters, balusters or other ornaments.

3275AA. A sign attached at right angles to a building shall project no more than six (6) feet from the building. No more than one (1) projecting sign is allowed for each entrance to each individual business establishment. The bottom of the sign shall be at least ten (8) feet above ground level. The area of a projecting sign shall not exceed twenty-four (24) square feet on either side.

3276AA. No sign for a street or sub-street level establishment shall extend higher than whichever of the following is lowest: Twenty-five (25) feet above grade, the top of the sills of the first level of windows above the first story, or the lowest point of the roof.

3277AA. Establishments in which the sole place of business is above the street level may locate a sign higher than twenty-five (25) feet above grade. However, all other regulations contained herein regarding sign design, size and location shall apply.

3278AA. A wall sign attached parallel to a building shall project no more than twelve (12) inches from the building surface.

3279AA. Vacant lots that are used for parking may have one ground sign at each entrance, not to exceed two (2) signs. The maximum square footage of each ground sign shall be thirty-two (32) square feet and shall not exceed twenty-five (25) feet in height. Only one of the two permitted signs shall be allowed to describe the business(s) for which the parking is being provided. (Ord. of 12-23-03, § 1)

3280AA. **Nonconforming signs.** All new signs within the herein described boundaries of the Central Business District (CBD) must comply with the requirements of this Section. In addition, any sign that is reconstructed, extended, changed structurally or in content, and any sign that replaces an existing sign must comply with these regulations.

3281AA. An existing sign that does not now conform may be repaired provided the cost of repair does not exceed fifty (50) per cent of the replacement cost for the entire sign. Such cost estimates shall be verified by the Inspector of Buildings. (Ord. of 12-23-03, § 1)

3290AA. **Safety and maintenance.** All signs and all parts thereof, including framework, supports, background, anchors, and wiring systems shall be constructed and maintained in compliance with the applicable building, electrical and fire prevention codes of the city. All signs and all parts thereof shall be kept in a good state of repair and maintenance as determined by the Inspector of Buildings. The Inspector of Buildings may order the removal of any sign in any location in the Central Business District (CBD) where the maintenance thereof constitutes a fire hazard, is dangerous or a menace to public health or safety, when the use thereof has been abandoned, or the permit for its use has been revoked. (Ord. of 12-23-03, § 1)

### 3300. SCREENING AND LANDSCAPING.

3310. **Purpose.** This section is designed to accomplish the following objectives:

3311. To provide a suitable boundary or buffer between residential uses and districts and abutting nonresidential uses;

3312. To separate different and otherwise incompatible land uses from each other in order to partially or completely reduce or obscure potential nuisances such as dirt, dust, litter, noise, glare from motor vehicle headlights, intrusion from artificial light (including ambient glare), or view of signs, unsightly buildings or parking lots;

3313. To provide visual relief to parking lots and protection from wind in open areas;

3314. To preserve or improve the visual and environmental character of New Bedford, as generally viewed from residential or publicly accessible locations; and

3315. To offer residential property owners protection against diminution of property values due to adjacent nonresidential use. (Ord. of 12-23-03, § 1)

3320. **Applicability.** The requirements of this section shall apply to:

3321. Any nonresidential use which adjoins or abuts any residential use or residential district or street;

3322. Any nonresidential use which adjoins or abuts any educational use;

3323. Any nonresidential or multi-family parking facility of five (5) spaces or more which adjoins or abuts any residential use or residential district;

3324. Any nonresidential or multifamily area used for loading or storage of new or discarded materials, products or wastes, in bulk or in containers, in open-air or unenclosed structures. (Ord. of 12-23-03, § 1)

3330. **Requirements.** The street or property line(s) separating residential uses or districts from adjoining or abutting non-residential uses shall be screened from the uses specified herein by means of vegetation, plantings, or fencing, to be provided and maintained by the owner of the property used for nonresidential or multifamily purposes. Fencing shall be of a type approved by the Inspector of Buildings.

3331. A screen may consist of plant materials, at least three (3) feet in height at the time of planting which will provide a compact dense form year-round and will reach a height at maturity of at least six (6) feet or a masonry wall or wooden fence designed in an attractive manner to visually obscure.

3332. A screen shall occupy a strip of land at least five (5) feet in width along a property line or along the perimeter of a storage area. Where a screen consists of a masonry wall, wooden fence or a vinyl fence produced to resemble a classical wooden fence, the remainder of the required five (5) foot strip shall be landscaped with trees and shrubs. Lawn or bark mulch may be used as ground cover in conjunction with such trees and shrubs. The schedule and amount of plantings will be determined subject to the schedule found in Appendix \_\_\_ and shall be reviewed during the site plan review process described in Section 5400 of this Code.

3333. A screen other than of plant materials, shall be at least six (6) feet in height above the ground elevation. Where a screen is required to visually obscure a storage area, the height of such screen shall not be less than six (6) feet and shall be equal to the height of materials stored above six (6) feet, but in no instance shall the materials to be screened be in excess of ten (10) feet in height.

3334. Except for on-premises directional signs not in excess of six (6) square feet in area, no sign shall be attached to or suspended from a screen. (Ord. of 12-23-03, § 1)

3340. **Special Permit.** Any screening or landscaping requirement set forth herein may be reduced upon the issuance of a special permit by the Planning Board if the Board finds that the reduction is not inconsistent with public health and safety, or that the reduction promotes a public benefit. (Ord. of 12-23-03, § 1)

3350. **Coordination with Site Plan Approval.** The Planning Board shall not approve a site plan unless said plan complies in all pertinent respects with the requirements of section 3300. (Ord. of 12-23-03, § 1)

3360. **Maintenance.** The owner of the property used for nonresidential or multifamily purposes shall be responsible for the maintenance, repair, and replacement of all landscaping materials

installed in accordance with this section. All plant materials required by this ordinance shall be maintained in a healthful condition. Dead limbs, refuse and debris shall be promptly removed. Ground cover materials shall be maintained so as to control weed growth. Dead plantings shall be replaced with new live plantings at the earliest appropriate season. Fences or walls shall be maintained in good repair and presentable appearance, or shall be replaced forthwith. (Ord. of 12-23-03, § 1)

### **3400. STORAGE REGULATIONS.**

**3410. Major Recreational Equipment.** No major recreational equipment shall be stored on any lot in a residential district other than in a carport or enclosed building or behind the rear building line of the principal building, provided however that such equipment may be parked anywhere on residential premises for a period not to exceed forty-eight (48) hours. No major recreational equipment shall be stored closer than eight feet to any side lot line or closer than six feet to a rear lot line. Unless otherwise provided by law, no such equipment shall be used for living or housekeeping purposes when stored on a residential lot, or in any location not approved for such use. All equipment which does not conform to these regulations shall be considered nonconforming. (Ord. of 12-23-03, § 1)

**3420. Unregistered Motor Vehicles.** No person or entity, corporate or otherwise, as owner or as one in control of premises situated within the limits of the City of New Bedford shall keep in the open on said premises more than one unregistered motor vehicle and shall not keep a wrecked or partially dismantled motor vehicle or junk motor vehicle or motor vehicle parts thereon except as hereinafter provided. This restriction shall apply to "stock racing cars" so-called.

3421. Exemption. Anyone holding a class three automobile license under the provisions of Massachusetts General Laws Chapter 140, Section 58, as amended, is exempt from the provisions of this section.

3422. License Request. A license to keep no more than two (2) unregistered or one wrecked or partially dismantled or stock racing motor vehicle or junk motor vehicle in the open on such premises shall be requested from the inspector of buildings, who may issue said license under the terms and standards herein set forth. The fee for such a license shall be one hundred dollars (\$100.00) annually, which sum shall be paid into the city treasury.

3423. License Issuance. The inspector of buildings may grant a one-year license to keep no more than two (2) unregistered or one wrecked or partially dismantled or stock racing motor vehicle or junk motor vehicle in the open on such premises after a determination by the inspector of buildings that the same will not create a hazard to the public safety or will not become a public nuisance. The inspector of buildings may renew said license upon reapplication and payment of appropriate fee.

3424. Appeal of License Denial. The refusal on the part of the inspector of buildings to issue a license may be appealed to the city council by filing an appeal with the city clerk within twenty (20) days of the refusal. The city council shall hold a public hearing on such appeal, notice of which shall be given by publishing in the newspaper circulated in the city seven (7) days, at least, before the date of the hearing. The cost of publication shall be paid by the applicant for the license.

3425. Remedies upon appeal. Upon appeal, the city council may approve the granting of a one-year license, upon such conditions as it may deem proper, to keep no more than two (2) unregistered or one wrecked or partially dismantled or stock racing motor vehicle or junk motor vehicle in the open after a public hearing has been held and the council determines that the keeping of the same will not create a hazard to the public safety or will not become a public nuisance.

3426. License Renewal. Renewals of said license shall be granted only after the procedure set forth in this section is followed.

3427. Violation. Any person who violates this section shall, unless otherwise provided by law, be liable to a penalty of not less than one dollar (\$1.00) or not more than fifty dollars (\$50.00) for each day said violation continues.

3428. Entry for Inspection. The inspector of buildings, the chief of police, or any person authorized by either, may at any time enter upon any premises upon which is kept two (2) or more unregistered or one or more wrecked or partially dismantled or stock racing motor vehicle or junk motor vehicle for the purpose of examining all such motor vehicles or parts thereof.

3429. Denial of Entry. Any person, whether licensed or not, in charge of said premises who refuses to admit thereto any persons authorized above to enter the same, or who fails to exhibit to him on demand all such motor vehicles or parts thereof, and any person who willfully hinders, obstructs or prevents such examiner from entering the premises or from making the examination authorized in this preceding paragraph, shall be punished by a fine of not less than three hundred dollars (\$300.00). Said fine shall be issued under the provisions of section 17-18 of the New Bedford Code of Ordinances.

3430. Inspector of Buildings to investigate complaints. The inspector of buildings immediately upon being informed by report or otherwise that two (2) or more unregistered or one or more wrecked or partially dismantled or stock racing motor vehicle or junk motor vehicle is being kept on any premises not licensed pursuant to this section or Chapter 140 of the General Laws shall inspect the same; and he shall forthwith in writing notify the owner or one in control of said premises to remove the offending motor vehicles or to apply for a proper license as described above. Any person so notified shall be allowed forty-eight (48) hours following the service of the notice in which to begin to remove said motor vehicles or apply for said license and he shall employ sufficient labor to speedily remove the offending motor vehicles.

3431. Removal of Vehicles. If an owner or person in control of the premises upon which is kept two (2) or more unregistered or one or more wrecked or partially dismantled or stock racing motor vehicle or junk motor vehicles refuse or neglects to comply with the requirements of such notice within the time limited, and such motor vehicles are not removed (or license issued) as herein ordered, the inspector of buildings may at once enter the premises or the abutting land with such assistance as he may require and remove the same. In case of such a removal, the costs and charges incurred shall be charged to the owner or person in control of the premises.

3432. Fine for failing to comply with Notice of Inspector of Buildings. Such owner or person in control shall, for every day's continuance of such refusal or neglect after being so notified, be punished by a fine of not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00) per day. Said fines shall be issued under the provisions of section 17-18 of the New Bedford Code of Ordinances. (Ord. of 12-23-03, § 1)

## **SECTION 4000. SPECIAL REGULATIONS.**

### **4100. ADULT USES.**

4110. **General.** No building or buildings shall be used as an adult entertainment establishment within a Business, Mixed Use, Business Planned, Industrial "A", Industrial "B", Industrial "C", or Waterfront Industrial District, unless a special permit for such use is granted by the City Council in accordance with the following provisions. No special permit for an adult entertainment establishment shall be granted for a building or buildings located within any residential district, the Bedford Landing-Waterfront Historic District, (as established pursuant to Section 2-156 of the

New Bedford Code of Ordinances) or the Central Business District (as described in Section 6-81 of the New Bedford Code of Ordinances). (Ord. of 12-23-03, § 1)

4120. **Separation Distances.** Adult entertainment establishments or uses may be permitted only when located outside the area circumscribed by a circle which has a radius of 500 feet from the following specified uses or zoning district boundaries:

4121. Residential district;

4122. School or church;

4123. Another adult entertainment establishment;

4124. An establishment licensed to sell alcoholic beverages under the provisions of G.L. c. 138, s. 12. (Ord. of 12-23-03, § 1)

4130. **Measurement of Radius.** The radius distance shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed adult entertainment establishment is to be located, to the nearest point of the parcel of property or the zoning district boundary line from which the proposed establishment is to be separated. In the case of the distance between adult entertainment establishments and between an adult entertainment establishment and an establishment licensed under G.L. c. 138, s. 12 such distances shall be measured between the closet points of the buildings in which such uses are located. (Ord. of 12-23-03, § 1)

4140. **Size of Establishment.** Adult entertainment establishments may not exceed three thousand five hundred (3,500) square feet of gross floor area. (Ord. of 12-23-03, § 1)

4150. **Parking Requirements.** The following parking requirements shall apply:

4151. Parking shall be provided in the side or rear yard area only.

4152. All parking areas shall be illuminated, and all lighting shall be contained on the property.

4153. Parking areas shall be landscaped in conformance with the appropriate provisions of this Ordinance. (Ord. of 12-23-03, § 1)

4160. **Screening.** A five (5) foot wide landscaped buffer shall be provided along the side and rear property lines of an adult entertainment establishment consisting of evergreen shrubs or trees not less than five (5) feet in height at the time of planting, or solid fence not less than six (6) feet in height.

4161. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public. (Ord. of 12-23-03, § 1)

4170. **Application.** The application for a special permit for an adult entertainment establishment must include the following information:

4171. Name and address of the legal owner of the establishment;

4172. Name and address of all persons having lawful equity or security interest in the establishment;

4173. Name and address of the manager;

4174. Number of employees;

4175. Proposed provisions for security within and without the establishment;

4176. The physical layout of the interior of the establishment. (Ord. of 12-23-03, § 1)

4180. **Prohibition.** No special permit shall be issued to any person convicted of violating the provisions of G. L. c. 119, s. 63, or G.L. c. 272, s. 28. (Ord. of 12-23-03, § 1)

#### **4200. BODY ART**

4210. **General.** No building or buildings shall be used as a body art establishment within a Business, Mixed Use, Business Planned, Industrial "A", Industrial "B", Industrial "C", or Waterfront Industrial District, unless a special permit for such use is granted by the City Council in accordance with the following provisions. No special permit for a body art establishment shall be granted for a building or buildings located within any residential district. (Ord. of 12-23-03, § 1)

4220. **Separation Distances.** Adult entertainment establishments or uses may be permitted only when located outside the area circumscribed by a circle which has a radius of 200 feet from the following specified uses or zoning district boundaries:

4221. Residential district;

4222. School or church;

4223. Another body art establishment;

4224. An establishment licensed to sell alcoholic beverages under the provisions of G.L. c. 138, s. 12;

4225. Child care facility; (Ord. of 12-23-03, § 1)

4230. **Determining the Radius.** The radius distance shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed body art establishment is to be located, to the nearest point of the parcel of property or the zoning district boundary line from which the proposed establishment is to be separated. In the case of the distance between body art establishments and between a body art establishment and an establishment licensed under G.L. c. 138, s. 12 such distances shall be measured between the closet points of the buildings in which such uses are located. (Ord. of 12-23-03, § 1)

4240. **Parking Requirements.** The following parking requirements shall apply:

4241. Parking shall be provided in the side or rear yard area only.

4242. All parking areas shall be illuminated, and all lighting shall be contained on the property.

4243. Parking areas shall be landscaped in conformance with the appropriate provisions of this Ordinance. (Ord. of 12-23-03, § 1)

4250. **Screening.** The following screening requirements shall apply:

4251. A five (5) foot wide landscaped buffer shall be provided along the side and rear property lines of a body art establishment consisting of evergreen shrubs or trees not less than five (5) feet in height at the time of planting, or solid fence not less than six (6) feet in height.

4252. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public. (Ord. of 12-23-03, § 1)

4260. **Application.** The application for a special permit for a body art must include the following information:

4261. Name and address of the legal owner of the establishment;

4262. Name and address of all persons having lawful equity or security interest in the establishment;

4263. Name and address of the manager;

4264. Number of employees;

4265. Proposed provisions for security within and without the establishment;

4266. The physical layout of the interior of the establishment;

4267. A site plan depicting the building, parking areas and screening. (Ord. of 12-23-03, § 1)

#### **4300. ASPHALT PLANTS.**

4310 **Special Permit.** No land located within an industrial "B" or industrial "C" zone shall be used for the operation of an asphalt or bituminous concrete processing plant, batching plant or a liquid asphalt storage facility unless a special permit for such use is granted by the city council in accordance with the provisions of this section.

(a) *Standard.* In granting a special permit under this section, the city council shall consider the effects upon the neighborhood and the city at large.

(b) *Procedure.* Before granting a special permit the city council shall hold a public hearing thereon, within sixty-five (65) days from the date of filing of the application for special permit; notice of time and place of such hearing and the subject thereof, sufficient for identification shall be published in a newspaper of general circulation in the City of New Bedford once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and also shall be sent by mail, postage prepaid, to the petitioner and to the owners of all property deemed by the city council to be affected thereby as they appear on the most recent local tax list and to the planning board. Said notice shall also be posted in a conspicuous place in city hall for a period of not less than fourteen (14) days before the day of such hearing.

(c) *Issuance of permit.* In granting any special permit provided for in this chapter the city council may issue said special permit subject to such appropriate conditions and safeguards as in its discretion will make an excepted use harmonious with the general purpose and intent of this chapter. No special permit shall be granted under this section except by a two-thirds (2/3) vote of the members of the city council. A decision shall be made within ninety (90) days following the date of the public hearing. (Ord. of 12-23-03, § 1)

#### **4400. FLOOD HAZARD OVERLAY DISTRICT (FHOD).**

4410. **Purpose.** The purpose of the FHOD is to provide adequate minimum standards and procedures for the construction of new residential and nonresidential structures and existing structures that are substantially improved within flood hazard areas, so that the construction or improvement of such structures will be eligible for insurance under the national flood insurance program by conforming to recognized construction techniques designed to offer flood protection and minimize flood losses. (Ord. of 12-23-03, § 1)

4420. **Location.** The FHOD is hereby established as an overlay district and includes all special flood hazard areas designated as Zones A, AI, A9, All, V9 and V14 on the New Bedford Flood Insurance Rate Maps (FIRM) as amended, effective January 5, 1984 and on file with the city clerk, city planning department and Inspector of Buildings. These maps, as well as the accompanying New Bedford Flood Insurance Study are incorporated herein by reference. (Ord. of 12-23-03, § 1)

4430. **Definitions.** As used in this Section 4300, the following terms have these definitions:

Base-flood elevation: Also known as the "10-year flood level; the elevation of flood waters having a one (1) percent or greater chance of flooding in any given year.

Development: any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

FHOD: The special flood hazard areas in the flood plain within the community subject to a one (1) percent or greater chance of flooding in any given year. These areas are designated on the New Bedford Flood Insurance Rate Maps (FE as zones A, AI, All, V9 and V14.

Flood Insurance Rate Maps (FIRM): The set of seven (7) official maps dated January 5, 1984, delineating special flood hazard areas of New Bedford as determined by the Federal Emergency Management Agency (FEMA).

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry-land areas from:

- (a) The overflow of streams, rivers or other inland water, or
- (b) Abnormally high tidal water or rising coastal waters resulting from storms or hurricanes.

Flood proofing: Any combination of structural and nonstructural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage so that, below the base-flood elevation, the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Lowest floor elevation: In zones A, AI, A9 and All, the lowest floor elevation is the elevation of the top of the lowest floor, including basement. In zones V9 and V14, the lowest floor elevation is the elevation of the bottom of the floor beam of the lowest floor.

Structure: A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as, a mobile home.

Substantial improvement: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

- (a) Before the improvement or repair is started, or
- (b) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(i) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or

(ii) Any alterations of a structure listed on the National Register of Historic Places or a state inventory of historic places. (Ord. of 12-23-03, § 1)

4440. **Procedures.** All building permits shall be reviewed by the Inspector of Buildings to determine if the location is within a FHOD as defined herein. The Inspector of Buildings shall administer this ordinance as follows:

4441. Review all permits for proposed development or substantial improvement, to assure that all other necessary permits have been received by those governmental agencies from which approval is required by federal or state law.

4442. Obtain, review, and reasonably utilize any base-flood elevation data available from a federal, state or other source, until such other data has been provided by the Federal Emergency Management Agency (FEMA) as criteria for requiring:

4442.a. For residential structures; that the lowest floor elevation, including basement, be at or above the base-flood elevation.

4442.b. For nonresidential structures; that the lowest floor elevation, including basement, be:

4442.b.(i) At or above the base-flood elevation, or

4442.b.(ii) That the basement be flood proofed to the base-flood elevation.

4443. Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding.

4444. Obtain and maintain records of the lowest floor elevation, including basement, in relation to mean sea level, of all new or substantially improved structures, whether or not such structure has a basement; and, if the structure has been flood proofed, the elevation to which the structure was flood proofed.

4445. Include the base-flood elevation data for all new subdivision proposals and other proposed new developments greater than fifty (50) lots or five (5) acres, whichever is greater. (Ord. of 12-23-03, § 1)

4450. **General Standards.** All new construction, major repairs or substantial improvements, including the placement of prefabricated and mobile buildings, within the FHOD shall be located and designed to be consistent with the need to minimize flood damage, and:

4451. Be designed or modified and anchored to resist flotation, collapse or lateral movement of the structures; and,

4452. Use construction materials and utility equipment that are resistant to flood damage; and,

4453. Use construction methods and practices that will minimize flood damage; and,

4454. Have all new and replacement water supply systems and sanitary sewerage systems designed to minimize or eliminate infiltration of flood waters into the systems. Sanitary sewerage systems shall also be designed to minimize or eliminate discharges from the system into flood waters, and on-site disposal systems shall be located to avoid

impairment to them, or contamination from them, during flooding. (Ord. of 12-23-03, § 1)

**4460. Utilities in the FHOD.** Utilities in the FHOD shall comply with the following standards:

4461. Electric and communications service, if of the direct burial type located underground, shall consist of waterproofed material, with junction or terminal boxes located above the base-flood elevation, with the exception of waterproofed commercial or industrial buildings in which case, externally located conduit, cable, terminal and/or junction boxes of gasketed waterproof construction meeting FEMA standards shall be used.

4462. All vents of sewage systems shall be constructed of solid pipe, terminating at least one foot above the base-flood elevation. All fixtures, except in waterproofed structures, shall be located above the base-flood elevation and equipped with special shut-off valves to be closed in flood conditions. Said fixtures shall also display permanent signs containing operating instructions of such fixtures.

4463. Manhole covers on individual or public sewer systems below the base-flood elevation, shall have watertight covers to the manhole frames.

4464. Sewer service piping shall be waterproofed, from the main sewage disposal system to either above the base-flood elevation, or the interior of a waterproofed structure. Such piping shall also be adequately anchored to prevent flotation.

4465. All construction materials for sewer service or disposal systems shall be water resistant.

4466. No heating system in any structure shall be located below the base-flood elevation, unless said system is enclosed in a waterproofed structure.

4467. Any underground tank for the storage of fuels or other liquids, located below the base-flood elevation, shall be designed and weighted to prevent flotation when empty. (Ord. of 12-23-03, § 1)

**4470. Stored Materials.** No materials or chemicals which would create hazard to life by flotation, release or contact, by solution or chemical reaction through contact with water, creating harmful effects, fire or explosion, shall be stored or used in manufacturing in any FHOD. (Ord. of 12-23-03, § 1)

**4480. Development Standards in the A, AI, A9 and All Zones Designated on the Flood Insurance Rate Maps (FIRM).**

4481. All new construction and substantial improvements of residential structures shall have the lowest floor elevation, including basement, elevated to or above the base flood elevation. In A zones, in the absence of Federal Emergency Management Agency (FEMA) base-flood elevation data, other reliable data shall be utilized as the basis for elevating residential structures to or above the base-flood elevation.

4482. All new construction and substantial improvement of nonresidential structures shall have the lowest floor elevation, including basement, elevated to or above the base flood elevation, or designed so that the structure and attendant utility and sanitary facilities below the base-flood elevation, are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. In A zones, in the absence of Federal Emergency Management Agency (FEMA) base-flood elevation data, other reliable data shall be utilized as the basis for elevating or watertight flood-proofing nonresidential structures to or above the base-flood elevation.

4383. Where flood proofing is utilized for a particular structure in accordance with the above paragraphs, a registered professional engineer or architect, shall certify that the flood proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base-flood elevation.

4484. Within all A, AI, A9 and All zones, all mobile home placement, including all new, substantially improved or expanded mobile home parks or subdivisions, shall be securely anchored to resist flotation, collapse or lateral movement by providing over-the-top ties at each of the four (4) corners of the mobile home, with two (2) additional ties per side at intermediate locations. Mobile homes less than fifty (50) feet in length shall require three (3) ties per side at intermediate locations. All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds, and any additions to a mobile home shall be similarly anchored as described above. In addition, within all A, AI, A9 and All zones, all mobile home placement, including all new, substantially improved or expanded mobile home parks or subdivisions shall require stands or lots which are elevated to or above the base-flood elevation, and provide adequate access and drainage. If pilings are used for elevation, such piling foundations shall be placed in stable soil no more than ten (10) feet apart and reinforcement provided for pilings more than six (6) feet above ground level. (Ord. of 12-23-03, § 1)

**4490. Development Standards in the V9 and V14 Zones Designated on the Flood Insurance Rate Maps (FIRM).**

4491. All new construction of walled and roofed buildings shall be located landward of mean high tide.

4492. All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns, and securely anchored to such pilings or columns, so that the lowest portion of the structural members of the lowest floor elevation (excluding the pilings or columns) is elevated to or above the base-flood elevation. In the absence of Federal Emergency Management Agency (FEMA) base-flood elevation data, other reliable data shall be used as the basis for elevating structures to or above the base-flood elevation.

4493. All new construction and substantial improvements shall be certified by a registered, professional engineer or architect, that the structure is securely anchored to adequately anchored pilings or columns, in order to withstand velocity, water and hurricane wave wash.

4494. All new construction and substantial improvements shall have the space below the lowest habitable floor free of obstructions, or be constructed with "breakaway walls," intended to collapse under stress without jeopardizing the structural support of the structure, so that the impact on the structure by abnormally high tides or wind driven water is minimized. Such enclosed space shall not be used for human habitation.

4495. The use of fill for structural support of buildings is prohibited. (Ord. of 12-23-03, § 1)

**4500. DOWNTOWN BUSINESS OVERLAY DISTRICT (DBOD)**

4510. **Purpose.** The purpose of the DBOD is to provide adequate minimum standards and procedures for the construction of new and rehabilitation of existing structures so as to promote economic and cultural development in the downtown area. (Ord. of 12-23-03, § 1)

4520. **Location.** The DBOD is hereby established as an overlay district comprised of the area between the east side of County Street, the north side of School Street, the west side of Route 18 and the south side of Kempton Street, specifically excluding areas located within said boundaries,

which have been designated as residentially zoned on the effective date of this ordinance. The DBOD is hereby designated on the City of New Bedford Zoning Map, as may be subsequently amended, on file in the Office of the City Clerk. (Ord. of 12-23-03, § 1)

4530. **Definitions.** Within this Section 4500, the following terms shall have the following meanings:

**Applicant:** The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

**Dwelling Unit:** A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

**Proposed project:** The project proposed by the applicant for which a special permit is being sought.

**Regulations:** The rules and regulations of the Planning Board.

**Upper level floors:** Any floor of a building that is located above the street level floor. In the event that two floors of the same building are level to a street or streets, neither of the two floors shall be considered upper level floors. (Ord. of 12-23-03, § 1)

4540. **Front Yard.**

4541. No story or part of any building except projecting eaves or uncovered steps shall be erected nearer to the street line of any street on which it fronts than the average alignment of the corresponding stories or parts of existing buildings within two hundred (200) feet on each side of the lot and within the same block and district. Where there is a building on one or both of the adjoining lots, the front yard for a building shall have a depth equal to the average of the front yard depths of the two (2) adjoining lots. A lot without a building shall be counted as having a front yard of the depth required by this ordinance. If there are no existing buildings on the same side of the street, the average setback alignment of corresponding stories within two hundred (200) feet on each side of and directly opposite the lot shall govern.

4542. Notwithstanding the previous paragraph, no building constructed within the DBOD shall have a front yard that exceeds ten (10) feet.

4543. Where the alignment of a building is not controlled by paragraph 4541, between every building and the line of the street upon which it fronts there shall be a front yard of a clear depth of not more than ten (10) feet.

4544. No off-street parking shall be located within the front yard. (Ord. of 12-23-03, § 1)

4550. **Special Permit.** Pursuant to the requirements of this section 9-201(d), the following may be permitted upon the issuance of a special permit by the Zoning Board of Appeals:

4551. Residential dwelling units on the upper level floors of pre-existing structures

4552. Reductions in setbacks, density, green space and parking requirements to allow for the development of residential dwelling units on the upper level floors of pre-existing structures

4553. Reductions in parking requirements for commercial use of pre-existing or new structures. (Ord. of 12-23-03, § 1)

4560. **Special Permit Application.** An application for a special permit shall be submitted to the Zoning Board of Appeals on forms therefrom furnished. Applicants are encouraged to rehabilitate existing structures and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

In addition the applicants shall submit:

4561. The following plans:

(A) A copy of the site plan approved by the Planning Board, if required pursuant to Section 9-331 et al;

(B) A plan illustrating location and layout of buildings, including layouts of any dwelling units. Additional drawings may be subsequently required by the Planning Board;

4562. The following narrative reports or data:

(A) A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated cost of construction and date of completion;

(B) Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by City Solicitor;

(C) Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by City Solicitor;

4563. Any and all other information that the Zoning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

4564. New Bedford Historic Commission approval, if applicable. (Ord. of 12-23-03, § 1)

4570. **Action by the Zoning Board of Appeals.** The Board may grant a special permit where it makes the following findings:

4571. The proposed project complies with the requirements of this section;

4572. The proposed project does not cause substantial detriment to the neighborhood after considering the following potential consequences:

a. noise, during the construction and operational phases;

b. pedestrian and vehicular traffic;

c. environmental harm;

d. visual impact caused by the character and scale of the proposed structure(s);

e. where relief to parking requirement has been sought, applicant has demonstrated that reasonable efforts have been made to comply with parking requirements.

f. For conversions of existing structures, the Zoning Board of Appeals must find that the proposed project protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site. (Ord. of 12-23-03, § 1)

#### **4600. WORKING WATERFRONT OVERLAY DISTRICT**

There shall be a Working Waterfront Overlay District, comprising the waterfront area between Gifford Street and Interstate Route I-195. A fish fillet or fish processing plant shall only be allowed in Industrial "B" Zones that are located within the Working Waterfront Overlay District. (Ord. of 12-23-03, § 1)

#### **Article II.**

#### **4700. ASSISTED AND INDEPENDENT LIVING FACILITIES.**

4710. **Purpose.** The purpose of this section is to provide a mechanism for the approval of:

4711. Assisted living facilities (ALF) within a residential environment that offer supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition; and

4712. Independent living facilities (ILF) that offer congregate living arrangements to persons over the age of fifty-five;

4713. The development of ALF and ILF in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and

4714. The development of ALF and ILF in a manner harmonious with the surrounding land uses while protecting natural resources and open space. (Ord. of 12-23-03, § 1)

4720. **Definitions.** Within this Section 4700, the following terms shall have the following meanings:

**Applicant:** The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

**Assisted Living Facility (ALF):** A facility as defined in 651 CMR 12.02.

**Bedroom:** A separate room intended for, or which customarily could be used for, sleeping.

**Dwelling Unit:** A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

**Independent Living Facility (ILF):** A facility reserved by deed for occupancy by persons over the age of fifty-five who are able to care for themselves, but with some common facilities as described herein.

Land: Land, including areas covered by water.

Regulations: The rules and regulations of the Planning Board.

Wetlands: Land subject to the provisions of G.L. c. 131, ss. 40 and 40A. (Ord. of 12-23-03, § 1)

4730. **Special Permit.** The development of an ALF and/or an ILF may be permitted upon the issuance of a special permit by the Planning Board, and upon site plan approval pursuant to Section 5400. (Ord. of 12-23-03, § 1)

4740. **Application.** An application for a special permit shall be submitted to the Planning Board on forms therefrom furnished. Each such application shall be accompanied, if applicable, by a definitive plan of land pursuant to the Regulations of the Planning Board. In addition the applicants shall submit:

4741. The following plans:

(A) a site plan pursuant to Section 5400;

(B) a plan at a scale of 1" = 40' showing the topography of the site at a minimum of two foot intervals, as well as vegetation and special features, including wetlands, perennial streams and ponds, trees of more than 8" caliper, rock outcroppings, slopes in excess of 15%, existing and proposed trails and paths, open vistas, structures of historical importance and biological or wildlife habitats, and proposed conservation and recreation easement areas;

(C) a plan illustrating preliminary landscaping and architectural design, showing types, location and layout of buildings, and typical elevations, as well as the general height, bulk and appearance of structures. Perspective drawings may be subsequently required by the Planning Board.

4742. The following narrative reports or data:

(A) a proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion;

(B) a development impact statement prepared by qualified professionals, detailing the impact of the development on the City's capacity to furnish services including, but not limited to, roads, police, fire, emergency services and water;

(C) information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by City Solicitor;

(D) copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by City Solicitor;

(E) any and all other information that the Planning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section. (Ord. of 12-23-03, § 1)

4750. **Standards.** In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

4751. Minimum dimensional requirements for ALFs and ILFs shall be as set forth in the district in which the proposed facility is located.

4752. Buffer. A buffer area of twenty (20) feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least ten (10') feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the City for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

4753. Removal and Replacement of Vegetation. With the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas.

4754. Roadways. The principal roadway(s) serving the site shall be designed to conform with the standards of the City where the roadway is or may be ultimately intended for dedication and acceptance by the City of New Bedford. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

4755. Parking. The applicant shall provide adequate parking to serve all anticipated uses on the property, with information detailing the method of computation of parking spaces. The minimum number of parking spaces provided on the site shall be 0.5 parking space per dwelling unit in an ALF and 1.0 parking space per dwelling unit in an ILF. For both ALFs and ILFs one (1) parking space shall be provided for every three (3) employees during the largest shift. The Planning Board may increase the required parking by up to 10% to serve the needs of employees, visitors and service vehicles. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots in front setbacks in residential zones, and in buffer areas in all zones, with the exception of necessary access driveways, are prohibited. Parking areas in residential districts shall be located to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. In parking areas of eleven or more parking stalls, at least one tree of three inch or greater caliper shall be planted for every six parking places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged. Textured paving or grade separated (elevated) walkways are desired on all pedestrian access ways.

4756. Loading. Loading areas must be at least 20 X 9 feet, and have a minimum overhead clearance of 10 feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

4757. Surface Drainage. The surface drainage system shall be designed in accordance with the Subdivision Rules and Regulations of the Planning Board, if any, and the standards of the Department of Public Works.

4758. Utilities. All electric, gas, telephone, and water distribution lines shall be placed underground, except upon a demonstration of exceptional circumstances.

4759. Paths. Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site and to pathways on adjacent sites.

4751A. Paving and curbing. Where the roadway is or may be ultimately intended for dedication and acceptance by the City of New Bedford, granite curbing, gray in color, is required, except in areas of very low traffic volume where no curbing will be required. Rolled asphalt (Cape Cod berm) curbing is unacceptable in all such ways. Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkway borders is encouraged. The use of textured materials for walkway borders is encouraged.

4751B. Design and Architectural Character. The Planning Board may require massing and style, roofs, facade elements, entrances, door and window openings, building materials and design elements consistent with the City and the neighborhood.

4751C. The ALF or ILF shall have an integrated emergency call, telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department and the Inspector of Buildings for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

4751D. An ALF or an ILF may consist of a single building or multiple buildings.

4751E. Structures and uses accessory to the ALF of ILF may also be provided (with the exception of covered parking areas) within the same building, including, but not limited to, the following: beauty and barber salons; recreational, physical fitness and therapy services; nondenominational chapel; library; bank automated teller machine; management offices; adult day care or adult day health facility; hospice residence; food service; laundry and covered parking areas; provided, however, that such accessory uses and structures shall be designed for the primary use of the residents and staff of the ALF or ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall be wholly be within a structure containing residential units, and shall have not exterior advertising display.

4751F. The facility shall be served by the municipal water system. (Ord. of 12-23-03, § 1)

4760. **Conversion of Existing Structures.** Applicants are encouraged to convert land and buildings that are no longer needed or suitable for their original use, and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

4761. Where conversion of an existing structure is proposed, the standards set forth in Section 4450 shall not apply where the existing structure is nonconforming; provided, however, that any proposed expansion of the existing structure shall conform to the extent feasible. (Ord. of 12-23-03, § 1)

4770. **Action by the Planning Board.** The Board may grant a special permit for an ALF/ILF where it makes the following findings:

4771. The proposed ALF complies with the requirements of this section;

4772. The proposed ALF does not cause substantial detriment to the neighborhood after considering the following potential consequences:

- (A) noise, during the construction and operational phases;
- (B) pedestrian and vehicular traffic;
- (C) environmental harm;
- (D) visual impact caused by the character and scale of the proposed structure(s).

4773. For conversions of existing structures, the Planning Board must find that the proposal protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site. The buffer requirements, minimum open space requirements, and building height requirements shall be those physically existing as of [date of enactment]. The Council may permit expansion of the structure to the degree reasonably necessary to comply with federal and state law. (Ord. of 12-23-03, § 1)

#### **4800. MOTOR VEHICLE LIGHT SERVICE AND REPAIR.**

4810. **General.** No automobile repair work, except emergency work, shall be done out of doors, and only subject to licenses and permits in accordance with law. Auto body and fender repairing is prohibited. (Ord. of 12-23-03, § 1)

4820. **Permit Required.** No building shall be erected, altered or converted for motor vehicle light service until a permit is issued by the Inspector of Buildings as provided in the State Building Code. (Ord. of 12-23-03, § 1)

4830. **Procedures.** Plot plans shall be submitted in duplicate for repair and in quadruplicate for light service; one set shall be kept at the building site during the progress of the work, one set on file in the office of the Inspector of Buildings; and in case of light service, one set for the mayor and council and one set for the chief of the fire department. (Ord. of 12-23-03, § 1)

4840. **Parking.** No pump, pipe or structure of any kind for the distribution of petroleum products shall henceforth be erected or installed unless there are parking facilities for vehicles to be serviced on private property, and the dispensing of said products over sidewalks and traveled ways by the use of hose, swinging arms or other devices is hereby prohibited, except where such use is absolutely required by installations made prior to August 1, 1946. (Ord. of 12-23-03, § 1)

4850. **Special Permit Required.** No site shall be used for light service and no permits for the erection, alteration or conversion of a building for said purpose shall be issued until a special permit for the use of said site for light service has been approved by the Board of Appeals following a public hearing. (Ord. of 12-23-03, § 1)

#### **4900. WIRELESS COMMUNICATIONS FACILITIES (WCF).**

4910. **Purpose.** The purpose of this section is to establish procedures for establishment of wireless communications facilities (a) by safe and appropriate siting consistent with the Telecommunications Act of 1996, while (b) minimizing visual impacts from such facilities on residential districts and scenic areas within New Bedford. (Ord. of 12-23-03, § 1)

4920. **Location.** WCF may be allowed by special permit in all districts. No WCF shall be erected or installed except in compliance with the provisions of this section. (Ord. of 12-23-03, § 1)

4930. **Submittal Requirements.** As part of any application for a special permit, applicants shall submit the information required for site plan review, as set forth herein at Section 5400. Applicants shall also provide:

4931. A description of the capacity of the facility, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity.

4932. Documentation evidencing that providers of WCS intend to co-locate on the facility.

4933. Documentation that the applicant is unable to co-locate on an existing or approved facility.

4934. Documentation that the facility complies with all requirements of the Federal Aviation Administration and City of New Bedford, including but not limited to lighting and airport approach zone encroachments.

4935. Documentation evidencing that the facility is designed to be the minimum height necessary to accommodate the anticipated and future users.

4936. Documentation certifying that the proposed WCF will meet all applicable FCC and state health and environmental standards. (Ord. of 12-23-03, § 1)

4940. **Special Permit.** A WCF may be erected upon the issuance of a special permit by the Zoning Board of Appeals if the Board determines that the adverse effects of the proposed facility will not outweigh the need for the WCF, in view of the particular characteristics of the site and of the proposal in relation to that site. The determination shall include consideration of each of the following:

4941. Communication needs served by the facility;

4942. Traffic flow and safety, including parking and loading;

4943. Impact on neighborhood character, including aesthetics;

4944. Impacts on the natural environment, including visual impacts;

4945. Potential fiscal impact, including impact on city services, tax base, and employment;

4946. New monopoles shall be considered only upon a finding that existing or approved monopoles or facilities cannot accommodate, or reasonably be made to accommodate, the equipment planned for proposed monopoles. (Ord. of 12-23-03, § 1)

4950. **Conditions.** All WCF shall be subject to the following conditions:

4951. To the extent feasible, the facility shall be designed and constructed so it is capable of accommodating co-location. Monopoles shall be designed to structurally accommodate foreseeable users (within a ten-year period), including wireless services providers and local police, fire and ambulance companies, unless the applicant demonstrates to the Zoning Board of Appeals that it is technically infeasible to do so.

4952. New free-standing facilities shall be limited to monopoles; no lattice towers shall be permitted. Monopole height shall not exceed the height restrictions of the zoning district within which the structure is to be located. Existing ground elevations may not be altered or distorted in order to achieve additional height.

4953. Free-standing facilities shall be set back from the nearest residential dwelling by a minimum distance equal to the height of the facility (as measured to its highest point,

including antennae, etc.) and further, said WCF shall not be located closer than twenty-five (25) feet from any street or lot line.

4954. WCF may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission towers, and the like. In such cases, the facility height shall not exceed two (2) feet above the height of the existing structure or building.

4955. All structures associated with WCF shall be removed within one year of cessation of use at the expense of the applicant. The Board of Appeals may require a performance guarantee to effect this result, including a bond of an amount to be determined by the Board of Appeals.

4956. To the extent feasible, all network interconnections from the communications facility shall be via land lines.

4957. Existing on-site vegetation shall be preserved to the maximum extent feasible.

4958. The facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Zoning Board of Appeals may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping, and screening.

4959. Traffic associated with the facility shall not adversely affect public ways.

4951A. Fencing may be required to control unauthorized entry to the WCF.

4951B. No interference to existing broadcast television, cable television, or radio signals, including emergency systems and public safety communications, shall be permitted from the WCF or components thereon. If interference occurs, the applicant must remedy the interference within the time period affixed by the Zoning Board of Appeals.

4951C. The Zoning Board of Appeals may require an applicant to pay for costs incurred by the Board to review the application for a WCF. These costs may include, without limitation, engineering, planning, technical or legal consulting services necessary for review purposes. (Ord. of 12-23-03, § 1)

#### **Section 4100A. Wamsutta Mill Overlay District (WMOD)**

4110A. *Purpose.* The purpose of the WMOD is to provide adequate minimum standards and procedures for the construction of new and rehabilitation of existing structures so as to promote economic and cultural development in the Wamsutta Mill area.

4120A. *Location.* The WMOD is hereby established as an overlay district comprised of the area between the north side of Logan Street, the east side of Acushnet Avenue, the south side of Wamsutta Street and the west side of North Front Street, specifically excluding areas located within said boundaries, which have been designated as residentially zoned on the effective date of this ordinance. The WMOD is hereby designated on the City of New Bedford Zoning Map, as may be subsequently amended, on file in the Office of the City Clerk.

4130A. *Definitions.* Within this Section 4100A, the following terms shall have the following meanings:

4131A. *Applicant:* The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or

have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

4132A. Dwelling Unit: A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

4133A. Proposed project: The project proposed by the applicant for which a special permit is being sought.

4134A. Proposed Project Site: The parcel of land, with buildings thereon on which the Proposed Project is located. (Ord. of 9-13-05, § 2)

4135A. Regulations: The rules and regulations of the Planning Board.

4135A.(i). Upper level floors: Any floor of a building that is located above the street level floor. In the event that two floors of the same building are level to a street or streets, neither of the two floors shall be considered upper level floors. Notwithstanding the previous sentence, in the event the Planning Board determines that the majority or an equal amount of street access is provided through the lower of the two floors level to a street or streets, the higher of the two floors level to a street or streets may be deemed an upper level floor. (Ord. of 9-13-05, § 5).

4140A. *Front Yard.*

4141A. No story or part of any building except projecting eaves or uncovered steps shall be erected nearer to the street line of any street on which it fronts than the average alignment of the corresponding stories or parts of existing buildings within two hundred (200) feet on each side of the lot and within the same block and district. Where there is a building on one or both of the adjoining lots, the front yard for a building shall have a depth equal to the average of the front yard depths of the two (2) adjoining lots. A lot without a building shall be counted as having a front yard of the depth required by this ordinance. If there are no existing buildings on the same side of the street, the average setback alignment of corresponding stories within two hundred (200) feet on each side of and directly opposite the lot shall govern.

4142A. Notwithstanding the previous paragraph, no building constructed within the WMOD shall have a front yard that exceeds ten (10) feet.

4143A. Where the alignment of a building is not controlled by subsection 4141A., between every building and the line of the street upon which it fronts there shall be a front yard of a clear depth of not more than ten (10) feet.

4144A. No off-street parking shall be located within the front yard.

4150A. *Special Permit.* Pursuant to the requirements of this section 4100A, the following may be permitted upon the issuance of a special permit by the Zoning Board of Appeals:

4151A. Residential dwelling units on the upper level floors of pre-existing structures.

4151B. Notwithstanding the provisions of Section 4151A hereof Residential Dwelling Units may be permitted, in addition to those permitted pursuant to Section

4151A, hereof, on floors other than upper level floors as defined in Section 4135A, hereof upon:

- i. a written determination of the Zoning Board of Appeals specifically finding that it will be economically unfeasible for the Applicant to successfully complete the proposed project if he is not allowed to develop residential units on floors other than the upper level floors; said finding to be made upon consideration and review of appropriate information by the Applicant supporting his claim of economic unfeasibility; and

either

- ii. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location on the Proposed Project Site, commercial and/or industrial space greater than or equal to 50% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units; or
- iii. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location within the City of New Bedford that is approved by the Planning Board of the City of New Bedford, commercial and/or industrial space greater than or equal to 75% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units. (Ord. of 9-13-05, § 1)

4152A. Reductions in setbacks, density, green space and parking requirements to allow for the development of residential dwelling units on the upper level floors of pre-existing structures.

4153A. Reductions in parking requirements for commercial use of pre-existing or new structures.

4160A. *Special Permit Application.* An application for a special permit shall be submitted to the Zoning Board of Appeals on forms therefrom furnished. Applicants are encouraged to rehabilitate existing structures and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

In addition the applicants shall submit:

4161A. The following plans:

- 4161(A)(i). A copy of the site plan approved by the Planning Board, if required pursuant to Section 5400 et al; Notwithstanding the previous sentence, the Applicant may choose to seek site plan approval from the Planning Board at the same time the Zoning Board of Appeals is considering his application for a Special Permit, hereunder in which case he shall submit a statement indicating that he has filed an application for Site Plan Approval with the Planning Board. Upon receipt of said statement, signed under the penalties of perjury, on a form proscribed by the Zoning Board of Appeals, the Zoning Board of Appeals shall deem this requirement fulfilled and shall include a condition in any approval that said approval is contingent upon the

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approval of said site plan by the Planning Board; (Ord. of 9-13-05, § 3)

4161(A)(ii). A plan illustrating location and layout of buildings, including layouts of any dwelling units. Additional drawings may be subsequently required by the Planning Board;

4161(A)(iii). The following narrative reports or data:

(1) A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated cost of construction and date of completion;

(2) Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by City Solicitor;

(3) Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by City Solicitor;

(4) Any and all other information that the Zoning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section;

(5) New Bedford Historic Commission approval, if applicable.

4170A. *Action by the Zoning Board of Appeals.* The Board may grant a special permit where it makes the following findings:

4171A. The proposed project complies with the requirements of this section;

4172A. The proposed project does not cause substantial detriment to the neighborhood after considering the following potential consequences:

4172A(i). noise, during the construction and operational phases;

4172A(ii). pedestrian and vehicular traffic;

4172A(iii). environmental harm;

4172A(iv). visual impact caused by the character and scale of the proposed structure(s);

4172A(v). where relief to parking requirement has been sought, applicant has demonstrated that reasonable efforts have been made to comply with parking requirements;

4172A(vi). For conversions of existing structures, the Zoning Board of Appeals must find that the proposed project protects the City's heritage by minimizing removal or disruption of historic,

traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site. (Ord. of 6-7-04, § 1)

### **Section 4200A. Riverside Avenue Mill Overlay District (RAMOD)**

4210A. *Purpose.* The purpose of the RAMOD is to provide adequate minimum standards and procedures for the construction of new housing facilities and rehabilitation of existing structures so as to promote economic and cultural development in the Riverside Avenue Mill area.

4220A. *Location.* The RAMOD is hereby established as an overlay district comprised of the area beginning at a point of intersection with the easterly line of Riverside Avenue and the southerly line of Manomet Street; thence easterly in the southerly line of Manomet Street, a distance of four hundred eighty seven (487) feet, more or less, to the Acushnet River; thence commencing again at the first point mentioned and running southerly in the east line of Riverside Avenue, a distance of one thousand two hundred sixty (1,260) feet, more or less, to a point in the Acushnet River; thence easterly and northerly along the Acushnet River to the termination of the first line herein described; containing approximately six hundred ninety thousand six hundred ninety one (690,691) square feet, more or less; and, all of the area bounded southerly by the north line of Manomet Street, westerly by the easterly line of Riverside Avenue; northerly by the southerly line of Belleville Road; easterly by the Acushnet River. The RAMOD is hereby designated on the City of New Bedford Zoning Map, as may be subsequently amended, on file in the Office of the City Clerk. (Ord. of 10-16-06, § 1)

4230A. *Definitions.* Within this Section 4200A, the following terms shall have the following meanings:

4231A. *Applicant:* The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

4232A. *Dwelling Unit:* A functioning room or group of rooms capable of being used as a residence (including studio units). Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

4233A. *Proposed Project:* The project proposed by the Applicant for which a special permit hereunder is being sought.

4233B. *Proposed Project Site:* The parcel of land, with buildings thereon on which the Proposed Project is located.

4234A. *Regulations:* The rules and regulations of the Planning Board.

4235A. *Upper level floors:* Any floor of a building that is located above the street level floor. In the event that a portion of two floors of the same building are level to a street or streets, neither of said two floors shall be considered upper level floors. Notwithstanding the previous sentence, in the event the Planning Board determines that the majority or an equal amount of street access is provided through the lower of the two floors level to a

street or streets, the higher of the two floors level to a street or streets may be deemed an upper level floor.

4240A. *Front Yard.*

4241A. No story or part of any building except projecting eaves or uncovered steps shall be erected nearer to the street line of any street on which it fronts than the average alignment of the corresponding stories or parts of existing buildings within two hundred (200) feet on each side of the lot containing the Proposed Project and within the same block and district. Where there is a building on one or both of the adjoining lots, the front yard for a building shall have a depth equal to the average of the front yard depths of the two (2) adjoining lots. A lot without a building shall be counted as having a front yard of the depth required by this ordinance. If there are no existing buildings on the same side of the street, the average setback alignment of corresponding stories within two hundred (200) feet on each side of and directly opposite the lot shall govern.

4242A. Notwithstanding the previous paragraph, no building constructed within the RAMOD shall have a front yard that exceeds ten (10) feet.

4243A. Where the alignment of a building is not controlled by subsection 4241A., between every building and the line of the street upon which it fronts there shall be a front yard of a clear depth of not more than ten (10) feet.

4244A. No off-street parking shall be located within the front yard.

4250A. *Special Permit.* Pursuant to the requirements of this section 4200A, the following may be permitted upon the issuance of a special permit by the Zoning Board of Appeals:

4251A. Residential Dwelling Units on the upper level floors of pre-existing structures.

4251B. Notwithstanding the provisions of Section 4251A hereof Residential Dwelling Units may be permitted, in addition to those permitted pursuant to Section 4251A, hereof, on floors other than upper level floors as defined in Section 4235A, hereof upon:

- i. a written determination of the Zoning Board of Appeals specifically finding that it will be economically unfeasible for the Applicant to successfully complete the proposed project if he is not allowed to develop residential units on floors other than the upper level floors; said finding to be made upon consideration and review of appropriate information by the Applicant supporting his claim of economic unfeasibility; and

either

- ii. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location on the Proposed Project Site, commercial and/or industrial space greater than or equal to 50% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units; or
- iii. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location within the City of New Bedford that is approved by the Planning Board of the City of New Bedford, commercial and/or industrial space greater than or equal to 50% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units. (Ord. of 9-13-05, § 1)

4252A. Reductions in setbacks, density, green space and parking requirements to allow for the development of Dwelling Units on the upper level floors of pre-existing structures.

4253A. Reductions in parking requirements for commercial use of pre-existing or new structures.

4260A. *Special Permit Application.* An application for a special permit shall be submitted to the Zoning Board of Appeals on forms therefrom furnished. Applicants are encouraged to rehabilitate existing structures and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

In addition, the Applicant shall submit:

4261A. The following plans:

4261A(i). A copy of the site plan approved by the Planning Board, if required pursuant to Section 5400 et al; Notwithstanding the previous sentence, the Applicant may choose to seek site plan approval from the Planning Board at the same time the Zoning Board of Appeals is considering his application for a Special Permit, hereunder in which case he shall submit a statement indicating that he has filed an application for Site Plan Approval with the Planning Board. Upon receipt of said statement, signed under the penalties of perjury, on a form proscribed by the Zoning Board of Appeals, the Zoning Board of Appeals shall deem this requirement fulfilled and shall include a condition in any approval that said approval is contingent upon the approval of said site plan by the Planning Board; (Ord. of 9-13-05, § 3)

4261A(ii). A plan illustrating location and layout of buildings, including layouts of any Dwelling Units. Additional drawings may be subsequently required by the Planning Board;

4261A(iii). The following narrative reports or data:

(1) A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated cost of construction and date of completion;

(2) Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by the City Solicitor;

(3) Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by the City Solicitor;

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(4) Any and all other information that the Zoning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section;

(5) New Bedford Historic Commission approval, if applicable.

**4270A. Action by the Zoning Board of Appeals.** The Board may grant a special permit where it makes the following findings:

4271A. The Proposed Project complies with the requirements of this section;

4272A. The Proposed Project does not cause substantial detriment to the neighborhood after considering the following potential consequences:

4272A(i). noise, during the construction and operational phases;

4272A(ii). pedestrian and vehicular traffic;

4272A(iii). environmental harm;

4272A(iv). visual impact caused by the character and scale of the proposed structure(s);

4272A(v). where relief to parking requirement has been sought, applicant has demonstrated that reasonable efforts have been made to comply with parking requirements;

4272A(vi). For conversions of existing structures, the Zoning Board of Appeals must find that the Proposed Project protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site. (Ord. of 12-27-04, § 1)

## **Section 4300A. Cove Street Mill Overlay District (COSMOD)**

**4310A. Purpose.** The purpose of the COSMOD is to provide adequate minimum standards and procedures for the construction of new housing facilities and rehabilitation of existing structures so as to promote economic and cultural development in the Cove Street Mill area.

**4320A. Location.** The COSMOD is hereby established as an overlay district comprised of the area bounded northerly by the southerly line of Gifford Street from its intersection with the easterly line of Morton Court to the Acushnet River; bounded easterly by the Acushnet River; bounded southerly by the northerly line of Cove Street from the Acushnet River to its intersection with the easterly line of Morton court; and bounded westerly by the easterly line of Morton Court. The COSMOD is hereby designated on the City of New Bedford Zoning Map, as may be subsequently amended, on file in the Office of the City Clerk.

**4330A. Definitions.** Within this Section 4300A, the following terms shall have the following meanings:

4331A. Applicant: The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

4332A. Dwelling Unit: A functioning room or group of rooms capable of being used as a residence (including studio units). Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

4333A. Proposed Project: The project proposed by the Applicant for which a special permit hereunder is being sought.

4334A. Proposed Project Site: The parcel of land, with buildings thereon on which the Proposed Project is located.

4335A. Regulations: The rules and regulations of the Planning Board.

4336A. Upper level floors: Any floor of a building that is located above the street level floor. In the event that a portion of two floors of the same building are level to a street or streets, neither of said two floors shall be considered upper level floors. Notwithstanding the previous sentence, in the event the Planning Board determines that the majority or an equal amount of street access is provided through the lower of the two floors level to a street or streets, the higher of the two floors level to a street or streets may be deemed an upper level floor.

4340A. *Front Yard.*

4341A. No story or part of any building except projecting eaves or uncovered steps shall be erected nearer to the street line of any street on which it fronts than the average alignment of the corresponding stories or parts of existing buildings within two hundred (200) feet on each side of the lot containing the Proposed Project and within the same block and district. Where there is a building on one or both of the adjoining lots, the front yard for a building shall have a depth equal to the average of the front yard depths of the two (2) adjoining lots. A lot without a building shall be counted as having a front yard of the depth required by this ordinance. If there are no existing buildings on the same side of the street, the average setback alignment of corresponding stories within two hundred (200) feet on each side of and directly opposite the lot shall govern.

4342A. Notwithstanding the previous paragraph, no building constructed within the COSMOD shall have a front yard that exceeds ten (10) feet.

4343A. Where the alignment of a building is not controlled by subsection 4341A., between every building and the line of the street upon which it fronts there shall be a front yard of a clear depth of not more than ten (10) feet.

4344A. No off-street parking shall be located within the front yard.

4350A. *Special Permit.* Pursuant to the requirements of this section 4300A, the following may be permitted upon the issuance of a special permit by the Zoning Board of Appeals:

4351A. Residential Dwelling Units on the upper level floors of pre-existing structures.

4351B. Notwithstanding the provisions of Section 4351A hereof Residential Dwelling Units may be permitted, in addition to those permitted pursuant

to Section 4351A, hereof, on floors other than upper level floors as defined in Section 4335A, hereof upon:

- iv. a written determination of the Zoning Board of Appeals specifically finding that it will be economically unfeasible for the Applicant to successfully complete the proposed project if he is not allowed to develop residential units on floors other than the upper level floors; said finding to be made upon consideration and review of appropriate information by the Applicant supporting his claim of economic unfeasibility; and

either

- v. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location on the Proposed Project Site, commercial and/or industrial space greater than or equal to 50% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units; or
- vi. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location within the City of New Bedford that is approved by the Planning Board of the City of New Bedford, commercial and/or industrial space greater than or equal to 75% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units.

4352A. Reductions in setbacks, density, green space and parking requirements to allow for the development of Dwelling Units on the upper level floors of pre-existing structures.

4353A. Reductions in parking requirements for commercial use of pre-existing or new structures.

4360A. *Special Permit Application.* An application for a special permit shall be submitted to the Zoning Board of Appeals on forms therefrom furnished. Applicants are encouraged to rehabilitate existing structures and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

In addition, the Applicant shall submit:

4361A. The following plans:

- 4361A(i). A copy of the site plan approved by the Planning Board, if required pursuant to Section 5400 et al. Notwithstanding the previous sentence, the Applicant may choose to seek site plan approval from the Planning Board at the same time the Zoning Board of Appeals is considering his application for a Special Permit, hereunder in which case he shall submit a statement indicating that he has filed an application for Site Plan Approval with the Planning Board. Upon receipt of said statement, signed under the penalties of perjury, on a form proscribed by the Zoning Board of Appeals, the Zoning Board of Appeals shall deem this requirement fulfilled and shall include a condition in

any approval that said approval is contingent upon the approval of said site plan by the Planning Board;

4361A(ii). A plan illustrating location and layout of buildings, including layouts of any Dwelling Units. Additional drawings may be subsequently required by the Planning Board;

4361A(iii). The following narrative reports or data:

(1) A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated cost of construction and date of completion;

(2) Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by the City Solicitor;

(3) Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by the City Solicitor;

(4) Any and all other information that the Zoning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

(5) New Bedford Historic Commission approval, if applicable.

4370A. *Action by the Zoning Board of Appeals.* The Board may grant a special permit where it makes the following findings:

4371A. The Proposed Project complies with the requirements of this section;

4372A. The Proposed Project does not cause substantial detriment to the neighborhood after considering the following potential consequences:

4372A(i). noise, during the construction and operational phases;

4372A(ii). pedestrian and vehicular traffic;

4372A(iii). environmental harm;

4372A(iv). visual impact caused by the character and scale of the proposed structure(s).

4372A(v). where relief to parking requirement has been sought, applicant has demonstrated that reasonable efforts have been made to comply with parking requirements.

4372A(vi). For conversions of existing structures, the Zoning Board of Appeals must find that the Proposed Project protects the City's

heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site. (Ord. of 9-13-05, § 1)

#### **Section 4400A. Mott-David-Ruth Mill Overlay District (MDRMOD)**

4410A. *Purpose.* The purpose of the MDRMOD is to provide adequate minimum standards and procedures for the construction of new housing facilities and rehabilitation of existing structures so as to promote economic and cultural development in the Mott-David-Ruth Street Mill area.

4420A. *Location.* The MDRMOD is hereby established as an overlay district comprised of the area beginning at the intersection of the westerly line of East Rodney French Boulevard and northerly line of Mott Street; thence proceeding westerly along the northerly line of Mott Street to the intersection of the northerly line of Mott Street and the easterly line of Cleveland Street; thence proceeding northerly along the easterly line of Cleveland Street to the intersection of the easterly line of Cleveland Street and the southerly line of Ruth Street; thence proceeding easterly along the southerly line of Ruth Street to the intersection of the southerly line of Ruth Street and the westerly line of East Rodney French Boulevard; thence proceeding along East Rodney French Boulevard to the point of beginning. Notwithstanding the previous sentence, Lot 153 as shown on City of New Bedford Assessor's Map 16 is excluded from the MDRMOD. The MDRMOD is hereby designated on the City of New Bedford Zoning Map, as may be subsequently amended, on file in the Office of the City Clerk.

4430A. *Definitions.* Within this Section 4400A, the following terms shall have the following meanings:

- 4431A. **Applicant:** The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed site, or have authority from the owner(s) to act for him/her/it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.
- 4432A. **Dwelling Unit:** A functioning room or group of rooms capable of being used as a residence (including studio units). Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.
- 4433A. **Proposed Project:** The project proposed by the Applicant for which a special permit hereunder is being sought.
- 4434A. **Proposed Project Site:** The parcel of land, with buildings thereon on which the Proposed Project is located.
- 4435A. **Regulations:** The rules and regulations of the Planning Board.
- 4436A. **Upper level floors:** Any floor of a building that is located above the street level floor. In the event that a portion of two floors of the same building are level to a street or streets, neither of said two floors shall be considered upper level floors. Notwithstanding the previous sentence, in the event the Planning Board determines that the majority or an equal

amount of street access is provided through the lower of the two floors level to a street or streets, the higher of the two floors level to a street or streets may be deemed an upper level floor.

4440A. *Front Yard.*

4441A. No story or part of any building except projecting eaves or uncovered steps shall be erected nearer to the street line of any street on which it fronts than the average alignment of the corresponding stories or parts of existing buildings within two hundred (200) feet on each side of the lot containing the Proposed Project and within the same block and district. Where there is a building on one or both of the adjoining lots, the front yard for a building shall have a depth equal to the average of the front yard depths of the two (2) adjoining lots. A lot without a building shall be counted as having a front yard of the depth required by this ordinance. If there are no existing buildings on the same side of the street, the average setback alignment of corresponding stories within two hundred (200) feet on each side of and directly opposite the lot shall govern.

4442A. Notwithstanding the previous paragraph, no building constructed within the MDRMOD shall have a front yard that exceeds ten (10) feet.

4443A. Where the alignment of a building is not controlled by subsection 4441A., between every building and the line of the street upon which it fronts there shall be a front yard of a clear depth of not more than ten (10) feet.

4444A. No off-street parking shall be located within the front yard.

4450A. *Special Permit.* Pursuant to the requirements of this section 4400A, the following may be permitted upon the issuance of a special permit by the Zoning Board of Appeals:

4451A. Residential Dwelling Units on the upper level floors of pre-existing structures.

4451B. Notwithstanding the provisions of Section 4451A hereof Residential Dwelling Units may be permitted, in addition to those permitted pursuant to Section 4451A, hereof, on floors other than upper level floors as defined in Section 4435A, hereof upon:

- i. a written determination of the Zoning Board of Appeals specifically finding that it will be economically unfeasible for the Applicant to successfully complete the proposed project if he is not allowed to develop residential units on floors other than the upper level floors; said finding to be made upon consideration and review of appropriate information by the Applicant supporting his claim of economic unfeasibility; and

either

- ii. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location on the Proposed Project Site, commercial and/or industrial space greater than or equal to 50% of the usable floor space of the non-upper level floor for which he seeks permission to develop residential dwelling units; or
- iii. written agreement of the Applicant, in a form acceptable to the Zoning Board of Appeals, to develop in another location within the City of New Bedford that is approved by the Planning Board of the City of New Bedford, commercial and/or industrial space greater than or equal to 75% of the usable floor space of the non-upper level

floor for which he seeks permission to develop residential dwelling units.

4452A. Reductions in setbacks, density, green space and parking requirements to allow for the development of Dwelling Units on the upper level floors of pre-existing structures.

4453A. Reductions in parking requirements for commercial use of pre-existing or new structures.

4460A. *Special Permit Application.* An application for a special permit shall be submitted to the Zoning Board of Appeals on forms therefrom furnished. Applicants are encouraged to rehabilitate existing structures and to permit reuses which are compatible with the character of the neighborhood and which take into consideration the interests of abutters, neighbors and the public, especially where the site abuts a residential area or the building(s) merit preservation.

In addition, the Applicant shall submit:

4461A. The following plans:

4461A(i). A copy of the site plan approved by the Planning Board, if required pursuant to Section 5400 et al. Notwithstanding the previous sentence, the Applicant may choose to seek site plan approval from the Planning Board at the same time the Zoning Board of Appeals is considering his application for a Special Permit, hereunder in which case he shall submit a statement indicating that he has filed an application for Site Plan Approval with the Planning Board. Upon receipt of said statement, signed under the penalties of perjury, on a form proscribed by the Zoning Board of Appeals, the Zoning Board of Appeals shall deem this requirement fulfilled and shall include a condition in any approval that said approval is contingent upon the approval of said site plan by the Planning Board;

4461A(ii). A plan illustrating location and layout of buildings, including layouts of any Dwelling Units. Additional drawings may be subsequently required by the Planning Board;

4461A(iii). The following narrative reports or data:

(1) A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated cost of construction and date of completion;

(2) Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by the City Solicitor;

(3) Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the City, the Conservation Commission, utility companies, any condominium organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by the City Solicitor;

(4) Any and all other information that the Zoning Board may reasonably require in a form acceptable to it to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

(5) New Bedford Historic Commission approval, if applicable.

4470A. *Action by the Zoning Board of Appeals.* The Board may grant a special permit where it makes the following findings:

4471A. The Proposed Project complies with the requirements of this section;

4472A. The Proposed Project does not cause substantial detriment to the neighborhood after considering the following potential consequences:

4472A(i). noise, during the construction and operational phases;

4472A(ii). pedestrian and vehicular traffic;

4472A(iii). environmental harm;

4472A(iv). visual impact caused by the character and scale of the proposed structure(s).

4472A(v). where relief to parking requirement has been sought, applicant has demonstrated that reasonable efforts have been made to comply with parking requirements.

4472A(vi). For conversions of existing structures, the Zoning Board of Appeals must find that the Proposed Project protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site. (Ord. of 1-27-06, § 1)

## **SECTION 5000. ADMINISTRATION AND PROCEDURES.**

### **5100. ADMINISTRATION.**

5110. **Permits.** This ordinance shall be administered by the Inspector of Buildings. Pursuant to the State Building Code, the Inspector of Buildings may require such plans and specifications as may be necessary to determine compliance with all pertinent laws of the Commonwealth and may request advisory reviews by other municipal boards and officials. Buildings, structures or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed with regard to size or shape or principal use except in compliance with then-applicable zoning, and after all necessary permits have been received under federal, state, or local law. Issuance of a Building Permit or Certificate of Use and Occupancy, where required under the Commonwealth's State Building Code, may serve as such certification. (Ord. of 12-23-03, § 1)

5120. **Enforcement.** The Inspector of Buildings shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this

ordinance and of permits, special permits, variances, and site plan approval issued thereunder. (Ord. of 12-23-03, § 1)

5130. **Penalties.** The penalty for violation of any provision of this ordinance, of any of the conditions under which a permit is issued, or of any decision rendered by the Board of Appeals, any special permit granting authority, or the Planning Board acting as site plan approval board shall be three hundred dollars (\$300.00) for each offense. Each day that each violation continues shall constitute a separate offense. (Ord. of 12-23-03, § 1)

## **5200. ZONING BOARD OF APPEALS.**

5210. **Establishment.** The Zoning Board of Appeals (sometimes referred to as the Board of Appeals herein) shall consist of five (5) persons who shall be appointed by the mayor and confirmed by the City Council. One (1) member shall be appointed annually in the month of January to serve for a term of five (5) years or until a successor is duly appointed, confirmed and qualified. Vacancies shall be filled in the manner as provided for original appointments. All members of the Board shall be residents of the city. Each member shall be paid at the rate of twenty dollars (\$20.00) per meeting attended, but in no event shall any member receive in excess of five hundred dollars (\$500.00) in any fiscal year.

5211. In case of a vacancy, inability to act, or interest on the part of a member of the Board of Appeals, such member's place shall be taken by an associate member designated by the presiding member of the Board. There shall be five (5) associate members of the Board of Appeals, who shall be appointed by the mayor and confirmed by the City Council. Annually in the month of January, one (1) member shall be appointed for a term of five (5) years. Vacancies shall be filled in the manner as provided for original appointments. All associate members of the Board of Appeals shall be residents of the city. Each associate member shall be paid at the rate of twenty dollars (\$20.00) per meeting attended, as a member replacing an absent member, and only when acting in that capacity according to the first sentence of this subsection; but in no event shall any associate member receive in excess of five hundred dollars (\$500.00) in any fiscal year. (Ord. of 12-23-03, § 1)

5220. **Powers.** The Board of Appeals shall have and exercise all the powers granted to it by G.L. c. 40A, c. 40B, and c. 41 and by this ordinance. The Board's powers are as follows:

5221. To hear and decide applications for special permits. Where specified herein, the Board of Appeals shall serve as the special permit granting authority, to act in all matters in accordance with the provisions of Section 5300, or as otherwise specified.

5222. To hear and decide appeals or petitions for variances from the terms of this ordinance, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Board of Appeals may not grant use variances.

5223. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 7, 8 and 15.

5224. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23. (Ord. of 12-23-03, § 1)

5230. **Regulations.** The Board of Appeals may adopt rules and regulations for the administration of its powers. (Ord. of 12-23-03, § 1)

5240. **Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits. (Ord. of 12-23-03, § 1)

**5300. SPECIAL PERMITS.**

5310. **Special Permit Granting Authority.** The Zoning Board of Appeals, the Planning Board or the City Council shall act as the Special Permit Granting Authority under this Chapter as specifically designated in a particular Section or in accordance with the Specific Designations in the Table of Principal Use Regulations under Appendix A of this Chapter. (Ord. of 12-23-03, § 1; Ord. of 12-8-05, § 1)

5320. **Criteria.** Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this ordinance, the determination shall include consideration of each of the following:

5321. Social, economic, or community needs which are served by the proposal;

5322. Traffic flow and safety, including parking and loading;

5323. Adequacy of utilities and other public services;

5324. Neighborhood character and social structures;

5325. Impacts on the natural environment; and

5326. Potential fiscal impact, including impact on city services, tax base, and employment. (Ord. of 12-23-03, § 1)

5330. **Procedures.** Applications for special permits shall be filed in accordance with the rules and regulations of the various special permit granting authorities, as may be applicable. (Ord. of 12-23-03, § 1)

5340. **Plans.** An applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 5400, herein. (Ord. of 12-23-03, § 1)

5350. **Development Impact Statement (DIS).** At the discretion of the special permit granting authority, the submittal of a development impact statement (DIS) may be required. The DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Professional or Civil Engineer, and a Registered Surveyor.

5351. Physical Environment.

(a) Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, location of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.

(b) Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

5352. Surface Water and Subsurface Conditions.

(a) Describe location, extent, and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the site.

- (b) Describe any proposed alterations of shore lines, marshes, or seasonal wet areas.
- (c) Describe any limitations imposed on the project by the site's soil and water conditions.
- (d) Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the site.

5353. Circulation Systems.

Project the number of motor vehicles to enter depart the site per average day and peak hour. Also state the number of motor vehicles to use streets adjacent to the site per average day and peak hour. Such data shall be sufficient to enable the special permit granting authority to evaluate (i) existing traffic on streets adjacent to or approaching the site, (ii) traffic generated or resulting from the site, and (iii) the impact of such additional traffic on all ways within and providing access to the site. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the DIS.

5354. Support Systems.

- (a) Water Distribution: Discuss the types of wells or water system proposed for the site, means of providing water for fire-fighting, and any problems unique to the site.
- (b) Sewage Disposal: Discuss the type of on-site or sewer system to be used, suitability of soils, procedures and results of percolation tests, and evaluate impact of disposal methods on surface and groundwater.
- (c) Refuse Disposal: Discuss the location and type of facilities, the impact on existing city refuse disposal capacity, hazardous materials requiring special precautions.
- (d) Fire Protection: Discuss the type, location, and capacity of fuel storage facilities or other flammables, distance to fire station, and adequacy of existing fire fighting equipment to confront potential fires on the proposed site.
- (e) Recreation: Discuss the distance to and type of public facilities to be used by residents of the proposed site, and the type of private recreation facilities to be provided on the site.
- (f) Schools: Project the increase to the student population for nursery, elementary, junior high school, and high school levels, also indicating present enrollment in the nearest public schools serving these categories of students.

5355. Phasing. Where development of the site will be phased over more than one (1) year, indicate the following:

- (a) Describe the methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles. Describe the approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure.

(b) Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into site development. (Ord. of 12-23-03, § 1)

5360. **Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this ordinance. (Ord. of 12-23-03, § 1)

5370. **Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 12 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the City Clerk. (Ord. of 12-23-03, § 1)

5380. **Regulations.** The special permit granting authority may adopt rules and regulations for the administration of this section. (Ord. of 12-23-03, § 1)

5390. **Fees.** The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits. (Ord. of 12-23-03, § 1)

#### **5400. SITE PLAN REVIEW.**

5410. **Purpose.** The purpose of this section is to provide for individual detailed review of development proposals which have an impact on the natural or built environment of the City in order to promote the health, safety and general welfare of the community; to ensure adequate parking, safe and accessible pedestrian and vehicular circulation; and to minimize traffic impact on city streets. (Ord. of 12-23-03, § 1)

5420. **Applicability.** The following types of activities and uses require site plan review by the Planning Board:

5421. Any new industrial or commercial construction or expansion over two thousand (2,000) gross square feet or any new industrial or commercial construction or expansion requiring more than five (5) additional parking spaces;

5422. New multiple family residential construction of three (3) or more units or expansion of existing multi-family residential structures resulting in the creation of one or more additional units.

5423. Any new construction or expansion of existing construction where a drive-thru window for any service including self-service is proposed; and any expansion of a structure presently containing a drive-thru.

5424. Any residential subdivision which is submitted under the subdivision control process;

5425. New industrial or commercial construction or additions less than two thousand (2,000) square feet if requiring a new curb cut or driveway or if substantially affecting existing internal circulation.

5426. Driveways in residential areas which require more than one new curb cut.

5427. Commercial or industrial ground signs. (Ord. of 12-23-03, § 1)

5430. **Procedures.** Applicants for site plan approval shall submit seventeen (17) copies of the site plan to the Planning Board for distribution to City departments and commissions for their review. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate and notify the applicant of its decision. In the event two meetings have lapsed after the application for site plan approval is filed, without the Planning Board taking action

on said site plan said Applicant may file a statement with the Board that the Board has received complete information in accordance with this ordinance and has had adequate time to consider the Site Plan. Upon receiving said statement, the Planning Board shall act on said Site Plan at its next meeting, if said Board determines that the Board has, in fact, received complete information in accordance with this ordinance. The decision of the Planning Board shall be a vote of a majority of the members of the Planning Board and shall be in writing. No building permit, for activities requiring site plan approval, shall be issued by the Inspector of Buildings without the written approval of the site plan by the Planning Board.

5431. Application for Building Permit. An application for a building permit to perform work as set forth in Section 5410 available as of right shall be accompanied by an approved site plan.

5432. Application for Special Permit or Variance. An application for a special permit or a variance to perform work as set forth in Section 5420 shall be accompanied by an approved site plan; in the alternative, any special permit or variance granted for work set forth in Section 5420 shall contain the following condition and cause the same to be written on such special permit or variance:

The work described herein requires the approval of a site plan by the New Bedford Planning Board pursuant to Section 5400 of the Zoning Ordinance. Any conditions imposed in such site plan approval shall also be conditions of this special permit/variance.

5433. Where the Planning Board approves a site plan "with conditions", and said approved site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

5434. Where the Planning Board serves as the special permit granting authority for proposed work, it shall consolidate its site plan review and special permit procedures.

5435. The applicant may request, and the Planning Board may grant by majority vote of its membership, an extension of the time limits set forth herein.

5436. No deviation from an approved site plan shall be permitted without modification thereof.

5437. Site plan approval does not constitute a certification that the proposed plan conforms to applicable zoning regulations, wetland regulations and/or any other City, State or Federal requirements that must be obtained prior to implementation of the elements of the site plan. (Ord. of 12-23-03, § 1)

5440. **Preparation of Plans.** Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Department and are encouraged to schedule a pre-submission meeting with the Planning Department. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=40'. (Ord. of 12-23-03, § 1)

5450. **Contents of Plan.** The contents of the site plan are as follows:

5451. Plan sheets prepared at a scale of one (1) inch equals forty (40) feet or such other scale as may be approved by the Planning Board. The plans are as follows:

5451.a. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, general circulation plan for vehicles

and pedestrians, drive-thru windows, curb cut locations, parking, fences, walls, walks, outdoor lighting including proposed fixtures, loading facilities, solid waste storage locations, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Planning Board.

5451.b. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water runoff drainage.

5451.c. Utility plan, which shall include all facilities for refuse and sewerage disposal or storage of all these wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.

5451.d. Architectural plan, which shall include the ground floor plan, proposed exterior building materials, treatments and colors and architectural elevations of all proposed buildings and a color rendering where necessary to determine the proposal's affect on the visual environment.

5451.e. Landscaping plan, showing the limits of work, existing tree lines as well as those tree lines to remain, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures during construction.

5451.f. Lighting plan showing the location and orientation of all existing and proposed exterior lighting, including building and ground lighting. The plan shall note the height, initial foot-candle readings on the ground and the types of fixtures to be used. (Ord. of 12-23-03, § 1)

5452. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned. (Ord. of 12-23-03, § 1)

5453. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this ordinance. (Ord. of 12-23-03, § 1)

5454. The site plan shall be accompanied by drainage calculations by a registered professional engineer as well as wetland delineations, if applicable. Storm drainage design must conform to City of New Bedford subdivision regulations. (Ord. of 12-23-03, § 1)

5455. The Planning Board may require a DIS as set forth in Section 5300, above. (Ord. of 12-23-03, § 1)

5456. Certification that the proposal is in compliance with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board. (Ord. of 12-23-03, § 1)

5460. **Waivers.** The Planning Board may, upon written request of the applicant, waive any of the submittal or technical requirements of Section 5430 and 5440 where the project involves relatively simple development plans. (Ord. of 12-23-03, § 1)

5470. **Approval.** Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm water drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

5471. Minimize: the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm water flow increase from the site, soil erosion, and the threat of air and water pollution;

5472. Maximize: pedestrian and vehicular safety to and from the site;

5473. Minimize obstruction of scenic views from publicly accessible locations;

5474. Minimize visual intrusion by controlling the layout and visibility of parking, storage, or other outdoor service areas viewed from public ways or premises which are residentially used or zoned;

5475. Minimize glare from vehicle headlights and lighting fixtures;

5476. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.

5477. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of solid and liquid wastes and hazardous substances;

5478. Ensure compliance with the provisions of this Zoning Ordinance.

5479. Minimize damage to existing adjacent public ways.

5479A. Promote orderly and reasonable internal circulation within the site so as to protect public safety and not unreasonably interfere with access to a public way or circulation of traffic on a public way in general. (Ord. of 12-23-03, § 1)

5480. **Lapse.** Site plan approval shall lapse after one year from the final approval if a substantial use in accordance with such approved plans has not commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant, within this one year period. (Ord. of 12-23-03, § 1)

5490. **Regulations.** The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines. (Ord. of 12-23-03, § 1)

5490A. **Fee.** The Planning Board may, from time to time, adopt reasonable administrative fees and technical review fees for site plan review. (Ord. of 12-23-03, § 1)

5490B. **Appeal.** Any person aggrieved by a decision of the Planning Board rendered pursuant to section 5400 may appeal such decision to the Zoning Board of Appeals as provided in G.L. c. 40A section 8. (Ord. of 12-23-03, § 1)

## **5500. AMENDMENTS.**

This Ordinance may from time to time be changed by amendment, addition, or repeal by the City Council in the manner provided in G.L. c. 40A, s.5, and any amendments thereto. (Ord. of 12-23-03, § 1)

5510. **Amendment advertising.** Any advertisement for a hearing, the purpose of which is to serve as notice of a zoning amendment proposal under G.L. c. 40A, s. 5, that proposes to change 25 parcels or fewer from one principal use district to another principal use district under section 2100, shall include the plot and lot number and the street address of the parcel or parcels whenever said plot and lot number and address is reasonably ascertainable. (Ord. of 4-19-06, § 1)

## **5600. APPLICABILITY.**

5610. **Other Laws.** Where the application of this Ordinance imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Ordinance shall control. (Ord. of 12-23-03, § 1)

5620. **Conformance.** Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this Ordinance unless the use or construction is commenced within a period of six months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. (Ord. of 12-23-03, § 1)

## **5700. PLANNING MORATORIUM**

5710. **Moratorium on used car sales permits.** To provide the licensing board with the opportunity to review criteria for granting licenses for used car sales, there is hereby imposed a moratorium on Class II used car sales permits, other than renewals, for a period of one year. During the term of this moratorium (unless earlier terminated by ordinance) the city will not accept any permit applications for Class II used car sales. The moratorium imposed by this section shall be in effect for one year commencing on the date of passage. (Ord. of 12-23-03, § 1)

**5800 – 8999. RESERVED.** (Ord. of 12-23-03, § 1)

## **9000. SEPARABILITY.**

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision herein. (Ord. of 12-23-03, § 1)

APPENDIX A  
TABLE OF PRINCIPAL USE REGULATIONS

D I S T R I C T S

PRINCIPAL USE	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
<b>A. RESIDENTIAL</b>										
1. Single-family dwelling	Y	Y	Y	Y	Y	N	N	N	N	N
2. Two-family dwelling	N	Y	Y	N	Y	N	N	N	N	N
3. Multifamily dwelling	N	N	Y	N	Y	N	N	N	N	N
4. Boarding House	N	N	BA	N	BA	N	N	N	N	N
5. Group residence	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
6. Assisted or Independent Living Facility	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
7. Nursing or convalescent home	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
8. Trailer camp or park	N	N	N	N	N	N	N	N	N	N
9. Hoofed animals	N	N	N	N	N	Y	N	N	N	N
10. Animals or head of poultry, not exceed to exceed one animal or head of poultry per one thousand (1,000) square feet of the net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y	Y	Y	Y	Y	Y	N	N	N	N
<b>B. EXEMPT AND INSTITUTIONAL USES</b>										
1. Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3. Child care facility (in existing building)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4. Child care facility (not in existing building)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5. Use of land for the primary purpose of	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

## NEW BEDFORD CODE

PRINCIPAL USE	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area										
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
7. Municipal facilities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
8. Essential services	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
9. Cemeteries	Y	Y	Y	Y	Y	N	N	N	N	N
10. Hospital	Y	Y	Y	Y	Y	N	N	N	N	N
C. COMMERCIAL										
1. Nonexempt agricultural use	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
2. Nonexempt educational use	N	N	N	N	Y	Y	BA	BA	BA	BA
3. Animal clinic or hospital; with ancillary animal boarding	N	N	N	N	SP	N	BA	BA	BA	N
4. Adult day care	BA	BA	BA	BA	BA	N	N	N	N	N
5. Family day care	BA	BA	BA	BA	BA	N	N	N	N	N
6. Large family day care	BA	BA	BA	BA	BA	N	N	N	N	N
7. club or lodge, nonprofit	CC	CC	CC	CC	CC	N	N	N	N	N
8. Funeral home	BA	BA	BA	BA	BA	BA	N	N	N	N
9. Adult entertainment establishment	N	N	N	N	CC	CC	CC	CC	CC	CC
10. Bed & Breakfast	BA	BA	BA	BA	BA	N	N	N	N	N
11. Motel, hotel or inn	N	N	N	N	Y	Y	Y	Y	Y	Y
12. Retail stores and services not elsewhere set forth	N	N	N	N	Y	Y	Y	Y	Y	Y
13. Motor vehicle sales and rental	N	N	N	N	CC	CC	CC	CC	N	N
14. Motor vehicle general repairs	N	N	N	N	CC	CC	N	CC	N	Y
15. Motor Vehicle body repairs	N	N	N	N	N	N	N	CC	N	N

NEW BEDFORD CODE

PRINCIPAL USE	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
16. Motor vehicle light service	N	N	N	N	CC	CC	CC	CC	N	CC
17. Restaurant	N	N	N	N	Y	Y	Y	N	SP	Y
18. Restaurant, fast-food	N	N	N	N	BA	BA	BA	N	N	BA
19. Business or professional office	N	N	N	N	Y	Y	Y	N	Y	Y
20. Medical offices, center, or clinic	N	N	N	N	BA	BA	BA	N	BA	BA
21. Bank, financial agency	N	N	N	N	Y	Y	Y	N	Y	Y
22. Indoor commercial recreation	N	N	N	N	Y	Y	Y	N	N	Y
23. Outdoor commercial recreation	N	N	N	N	BA	BA	BA	N	BA	BA
24. Wireless Communications Facilities	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
25. Theatres and auditoriums	N	N	N	N	PB	PB	N	N	N	N
26. Convention Centers	M	M	M	M	PB	PB	PB	PB	PB	N
D. INDUSTRIAL										
1. Earth removal	N	N	N	N	N	N	N	N	N	N
2. Manufacturing	N	N	N	N	N	N	Y	Y	Y	Y
3. Light manufacturing	N	N	N	N	N	N	Y	Y	Y	Y
4. Research, development or testing laboratories and facilities	N	N	N	N	Y	Y	Y	Y	Y	Y
5. Fish processing	N	N	N	N	N	N	N	N	N	Y
6. Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	N	N	N	N	N	N	Y	Y	Y	Y
7. Transportation terminal	N	N	N	N	N	N	Y	Y	Y	Y
8. Water freight terminal	N	N	N	N	N	N	N	N	N	Y
9. Businesses engaged in the sale, distribution or storage of grain, petroleum products, building materials and industrial machinery provided that such businesses shall be primarily reliant upon a waterfront location or shall be in direct support of an industrial use which requires a waterfront location	N	N	N	N	N	N	N	N	N	Y
10. Businesses engaged in the sale, distribution or storage of grain, petroleum products, building materials and industrial machinery	N	N	N	N	N	N	N	CC	N	N
11. Businesses engaged in salvaging, dismantling and reprocessing of scrap and waste materials including building materials, motor vehicles, machinery and equipment, paper,	N	N	N	N	N	N	N	N	N	Y

NEW BEDFORD CODE

PRINCIPAL USE	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
bags or any other discarded material, provided that such business shall be primarily reliant upon a waterfront location										
12. Junkyard or automobile graveyard	N	N	N	N	N	N	N	N	N	N
13. Contractor's yard	N	N	N	N	Y	Y	Y	Y	N	N
14. Low-level radioactive or nuclear waste facility	N	N	N	N	N	N	N	N	N	N
15. Tire recycling & re-treading	N	N	N	N	N	N	N	N	N	N
16. Batch asphalt & concrete plants	N	N	N	N	N	N	N	CC	N	N

(Ord. of 12-23-03, § 1; Ord. of 12-8-05, §§ 2-4)

**APPENDIX B**  
**i) TABLE OF DIMENSIONAL REGULATIONS**

**Section 2.02 D I S T R I C T S**

REQUIREMENT	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
Minimum Lot Size (sq. ft.)	8,000	8,000 for uses allowed in RA; 10,000 for two family units	8,000 for uses allowed in RA; 10,000 for two family units; 15,000 for 3 or more family units	16,000	8,000 for uses allowed in residence A; 10,000 for two family units; 15,000 for 3 or more family units	0	0	0	0	0

NEW BEDFORD CODE

REQUIREMENT	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
Density of Dwelling Units per Lot	1 per 10,000 sq.ft.	1 per 10,000 sq. ft. for single family; 1 per 5,000 sq. feet for two family	1 per 10,000 sq. ft. for single family; 1 per 5,000 sq. feet for two family; 1 per 1,000 sq. feet for three or more family	1 per 16,000 sq. ft.	1 per 10,000 sq. ft. for single family; 1 per 5,000 sq. feet for two family; 1 per 1,000 sq. feet for three or more family	N/A	N/A	N/A	N/A	N/A
Lot Frontage (ft.)	75	75 for uses allowed in RA; 100 for two family	75 for uses allowed in RA; 100 for two family; 150 for 3 or more family	150	75 for uses allowed in RA; 100 for two family; 150 for 3 or more family; 0 for other allowed uses	0	0	0	0	0
Height of Buildings (ft.)	45 ft.; 60 for religious, educational, or institutional buildings	45; 60 for religious, educational, or institutional buildings	60	35; 60 for religious, educational, or institutional buildings	45 for single or two family; 60 for three family, 100 <sup>1</sup> for other allowed uses	25	100 <sup>1</sup>	100 <sup>1</sup>	100 <sup>1</sup>	100 <sup>1</sup>

NEW BEDFORD CODE

REQUIREMENT	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
Height of Buildings (# stories)	2.5 3 for religious, educational, or institutional buildings	2.5; 3 for religious, educational, or institutional buildings	4	2.5 3 for religious, educational, or institutional buildings	2.5 for uses allowed in residence A or B; 4 for three or more family; 7 for other allowed uses	2	7	7	7	7
Front Yard (ft.)	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	40 <sup>2</sup>	20 for uses allowed in residential district <sup>1</sup> ; 0 for other allowed uses	25	25	25	25	10
Side Yard (ft.)	8 on one side; 12 on the other	8 on one side; 12 on the other	8 on one side; 12 on the other	16 on one side; 24 on the other	8 on one side, 12 on the other for uses allowed in residential district; for other uses, 8 on any side where adjacent lot is in a residential district or used for residential purposes	25	25	25	25	10

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REQUIREMENT	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI
Rear Yard (ft.)	30	30	30	30	30 for uses allowed in residential district; for other uses, 10 for 1-2 story buildings; 20 feet for 3 or more stories	25	25	25	25	10 for 1-2 story buildings; 20 feet for 3 or more stories
Lot Coverage by Buildings (%)	30; 40 on corner lots	30; 40 on corner lots	30; 40 on corner lots	30; 40 on corner lots	30; 40 on corner lots for uses allowed in residential district; 0 for other uses	50	50	50	50	50
<b>Article III. Green Space</b>	35%	35%	35%	35%	35% for uses allowed in residential districts; 0 for other uses	20%	20%	20%	20%	20%

(Ord. of 12-23-03, § 1)

APPENDIX C  
TABLE OF PARKING AND LOADING REQUIREMENTS

USE	PARKING REQUIREMENTS	LOADING REQUIREMENTS
One-family dwelling Two-family dwelling Multi-family (3) or more per structure	Two (2) spaces per dwelling unit Two (2) spaces per dwelling unit <b>Article IV. Two (2) spaces per dwelling unit</b>	One (1) loading space for each multi-family dwelling containing more than ten (10) dwelling units, or more than twenty (20) housekeeping units
Hotel, motel, bed and breakfast, rooming or boarding or lodging house,	One (1) space per each employee per shift, who does not reside on the premises; one (1)	One (1) loading space for each building containing more than 20

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USE	PARKING REQUIREMENTS	LOADING REQUIREMENTS
tourist home, dormitories, or other non-family residence accommodations, excluding group homes	space per guest room, dwelling parking requirements, if applicable	guest rooms
Offices: General, professional, business, banks, medical clinics and laboratories, radio and television stations; office of non-profit educational, cultural, or charitable organizations	One (1) space per each 200 sq. ft. of gross floor area but not less than two (2) spaces for each business unit intended to occupy the premises. After 10,000 sq. ft. of gross floor area, one space for every 1,000 sq. ft. of gross floor area	One (1) loading space for each building containing 10,000 sq. Ft. or more of gross floor area. Two (2) loading spaces for 100,000 sq. Ft. or more of gross floor area
Fast-food drive-in, carry-out restaurants	One (1) space per each employee per shift for a minimum of five (5) spaces plus one (1) space per 100 sq. ft. of gross floor area with a minimum of twenty (20) spaces	One (1) loading space for each building
Businesses engaged in retail sale of goods and services, not elsewhere enumerated herein	One (1) space per each 200 sq. ft. of gross floor area, but not less than two (2) spaces for each business use intended to occupy the premises. After 20,000 sq. ft. gross floor area, one space per 400 sq. ft.	One loading space for each building containing more than 5,000 and less than 10,000 sq. ft. of gross floor area. Thereafter, one (1) additional loading space shall be required for each additional 25,000 sq. ft. of gross floor area
Businesses engaged in retail sale, rental, repair, servicing, storage and distribution of motor vehicles, trailers, campers, boats, furniture or building materials	One (1) space per each 400 sq. ft. of gross floor area, but not less than two (2) spaces for each business use intended to occupy the premises	
Hospital, convalescent homes, nursing homes, rest homes or homes for the aged	One (1) space per three (3) beds, three (3) space Drop-Off Zone.	One (1) loading space for each building containing 10,000 sq. ft. or more of gross floor area. Two (2) loading spaces for buildings containing 100,000 sq. ft. or more of gross floor area
Places of assembly, including theaters, veterans, fraternal, social and recreational clubs and organizations not operated for a profit; facilities primarily	One (1) space per five (5) seats for which the building is designed or one (1) spaces for each 200 sq. ft. of gross floor area whichever results in the greatest number	

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USE	PARKING REQUIREMENTS	LOADING REQUIREMENTS
for the education and instruction of persons 16 yrs. of age and older; taxi, bus & railroad passenger terminals; auditoriums, theaters, bowling alleys and dance halls; sports facilities; places of worship; funeral homes		
Businesses engaged in the manufacturing, processing, assembly, fabrication of products, including research and testing laboratories and facilities	One (1) space per each 500 sq. ft. of gross floor area plus one (1) space for each vehicle used in conducting the business	Two (2) loading spaces for each building containing 10,000 sq. Ft of gross floor area. Thereafter, one (1) additional loading space shall be required for each additional 25,000 sq. Ft. of gross floor area or for each fifteen (15) feet of dock, platform or opening in the building where the loading or unloading of commodities is intended to occur, whichever is the greatest
Businesses engaged in the warehousing and distribution of goods & materials including building & construction contractors, equipment & supplies on premises, motor freight terminal, facilities for storing & servicing of motor vehicles used in conducting a business or public transportation, industrial machinery & equipment, grain, petroleum products & junkyards	One (1) space per 1500 sq. Ft. of gross floor area up to 15,000 sq. ft. Thereafter, one (1) additional space for each 5,000 sq. Ft or portion thereof in excess of 15,000 sq. ft., plus one (1) space for each vehicle utilized in the business	
Schools, Adult Day Care Centers, Day Care Centers, excluding family day care homes	One (1) space for each employee in addition to three (3) space Drop-Off Zone	
Group Homes	One (1) space for each employee per shift	One (1) loading space for each building containing more than 20 guest rooms
Family Day Care Home, Large Family Day Care Home	One (1) space for each non-resident employee in addition to residential parking requirement	N/A